TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 140.

HENRY L. COE, PLAINTIFF IN ERROR,

vs.

ARMOUR FERTILIZER WORKS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

FILED APRIL 6, 1914.

(22,918)

(23,616)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 140.

HENRY L. COE, PLAINTIFF IN ERROR,

vs.

ARMOUR FERTILIZER WORKS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

INDEX.

	Original.	Print
Caption	*a*	1
Transcript from the circuit court of Manatee county, Florida	1	1
Præcipe for summons	1	1
Summons	1	1
Declaration	2	2
Original note of Manatee County State Bank, June 30, 1906	3	3
Verdict	3	3
Order for default	4	4
Motion to amend minutes	4	4
Order granting motion to amend minutes	5	5
Minute entries as amended	5	5
Verdict	6	5
Judgment	6	6
Præcipe for execution	7	6
Execution	7	7
Præcipe for execution against Henry L. Coe	8	7
Execution against Henry L. Coe	9	8
Sheriff's return on writ of execution	10	9
Petition of Henry L. Coe to quash	10	9
Order quashing execution	13	11
Mandate of supreme court of Florida	13	12
Order overruling motion to quash	14	12
Order fixing bond on writ of error	15	13
Præcipe for writ of error	16	14

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 6, 1914.

	Original.	Print
Writ of error	16	14
Bond on writ of error	17	15
Præcipe for record	18	16
Assignment of errors	19	17
Clerk's certificate	20	17
Opinion by Cockrell, J.	21	18
Judgment	22	18
Petition for writ of error	23	19
Assignment of errors	25	20
Order fixing bond on writ of error	26	20
Bond on writ of error	27	21
Power of attorney of W. A. Carter	28	22
Præcipe for record	29	22
Opinion by Whitfield, C. J.	31	24
Clerk's certificate	34	25
Citation and service	35	26
Writ of error	37	27

a Be it remembered, that on the 29th day of July, A. D. 1912, at a regular term of the Supreme Court of the State of Florida, came the Plaintiff in Error, Henry L. Coe, by counsel and filed in the Clerk's office of the Supreme Court of Florida, a transcript of the record of the proceedings and judgment of the Circuit Court of Florida, for Manatee County, in a certain cause, wherein, Armour Fertilizer Works, a corporation, was Plaintiff in Execution, and Henry L. Coe, was Defendant in Execution, and of the writ of error therein from the judgment of the Circuit Court therein rendered, which said transcript of record of the cause aforesaid and subsequent proceedings to judgment and writ of error therefrom is in the words and figures as follows, to-wit:

1 In the Supreme Court of Florida.

Transcript of Record of Proceedings in the Circuit Court of Manatee County, Florida, in the Suit of Armour Fertilizer Works, Plaintiff in Execution, vs. Henry L. Coe, Defendant in Execution, Therein Lately Pending.

On the 22nd day of February, 1911, the plaintiff filed its præcipe for summons ad respondendum to defendant in words and figures as follows:

In Circuit Court, Manatee County, Florida.

ARMOUR FERTILIZER WORKS, a Corporation,
v.
PARRISH VEGETABLE & FRUIT COMPANY, a Corporation.

Assumpsit. Damages, $5,000.00

The clerk of said court will please issue summons ad respondendum in the above styled cause returnable to the rule day in March, 1911.

E. F. WILSON,
SINGLATARY & REAVES,
Attorneys for Plaintiff.

On the 22nd day of February, 1911, summons ad respondendum issued in words and figures as follows:

Summons ad Res.—Original.

THE STATE OF FLORIDA,
County of Manatee:

To all and Singular the Sheriffs of the State of Florida, Greeting:

We command you to summon Parrish Vegetable & Fruit Company, a corporation, if they be found within the State of Florida,

personally to be and appear before the Judge of our Circuit Court for Manatee County, at the Court House in Bradentown, on the first Monday in March next, being a rule day of our said Court, and on the 6th day of March, 1911, to answer Armour Fertilizer Works, a corporation, in an action of Assumpsit Damages $5,000.00, and have then and there this writ.

Witness, Robt. H. Roesch, Clerk of said Circuit Court for the County of Manatee and the seal of said Court, at Bradentown, aforesaid, on this 22nd day of February, A. D. 1911.

[SEAL.] ROBT. H. ROESCH, *Clerk,*
By JAS. A. HERRIN,
Deputy Clerk.

2 On the 24th day of February, A. D. 1911, service of summons was made on defendant by delivering a true copy thereof to C. P. Parrish, the said C. P. Parrish being the President of the within named defendant corporation.

M. H. WYATT,
Sheriff of Manatee County, Florida,
By E. SHIVER, *D. S.*

On the 6th day of March, 1911, plaintiff filed its declaration in words and figures as follows, to-wit:

In Circuit Court, Manatee County, Florida.

ARMOUR FERTILIZER WORKS, a Corporation,
v.
PARRISH VEGETABLE & FRUIT COMPANY, a Corporation.

Assumpsit. Damages, $5,000.00

Armour Fertilizer Works, a corporation, plaintiff, by its attorneys E. F. Wilson and Singletary & Reaves sues the Parrish Vegetable & Fruit Company, a corporation, defendant, for that the defendant on the 30th day of June, 1906, by its promissory note now overdue, promised to pay to the plaintiff Three Thousand Two Hundred Eighty-two and 1/100 Dollars ($3,282.01) on July 1st, 1907, with interest at 8% per annum, but did not pay the same or any part thereof except that on the 18th day of July, 1907, the defendant paid $131.28 and on March 7, 1910, defendant paid $159.70, on said note.

Defendant did further promise in and by the terms of said note that should it become necessary to collect the same through an attorney, it would pay all cost of collection including a reasonable attorney's fee, and the plaintiff says that on account of the failure of defendant to pay said note it has been compelled to employ an attorney to collect by suit thereby rendering the defendant liable for the reasonable fee of said attorney.

Wherefore the plaintiff brings this suit and claims $5,000.00, damages.

A copy of the original note is hereto attached.

E. F. WILSON AND
SINGLETARY & REAVES,
Attorneys for Plaintiff.

3 The copy of the original note attached to the above declaration is in words and figures as follows:

Manatee County State Bank, Palmetto, Florida.

$3,282.01. PALMETTO, FLA., June 30, 1906.

July 1, 1907, after date we promise to pay to the order of Armour Fertilizer Works, owned and operated by Armour & Company, Three Thousand two hundred eighty two and 1/100 dollars, at the Bank of Manatee, Bradentown, Florida, for value received, with interest after date at the rate of 8% per annum until paid.

Now should it become necessary to collect this note through an attorney, either of us, whether maker, security or indorser on this note, hereby agrees to pay all costs of such collection including a reasonable attorney's fee.

PARRISH VEGETABLE & FRUIT COMPANY,
By C. P. PARRISH, *Pres.*
JESSE SIMS, *Sec'y.*

Said note being endorsed on back as follows:

For Value received we jointly and severally guarantee the payment of the within note at maturity and waive demand, protest and notice of non payment thereof and consent that the holder may grant any extension on within note that it deems proper.

C. P. PARRISH.
L. SIMS.
C. W. PARRISH.
K. S. PARRISH.
JESSE SIMMS.

Extended to July 1st, 1908.
THE ARMOUR FERTILIZER WORKS.

Credit July 18, 1907, by cash $131.28.

On the 31st day of March, A. D. 1911, at a term of said court, came the respective parties by their attorneys and submitted said cause, on the issues joined between them, to a jury, who were duly sworn according to law, and who having heard the evidence, the charge of the court and argument of counsel, returned the verdict, in words and figures as follows:

In Circuit Court, Sixth Judicial Circuit in and for Manatee County, Florida.

THE ARMOUR FERTILIZER WORKS, a Corporation, Plaintiff,
vs.
PARRISH VEGETABLE & FRUIT CO., a Corporation, Defendant.

Assumpsit. Damages, $5,000.00

We the jury to whom the above matter was referred for final hearing and assessment of damages, find for the plaintiff and assess the damages as follows:

For balance due on said note, Feb. 1, 1911	$2,714.48
Interest to date	18.09
Reasonable attorney's fee	273.25
Total	$3,005.82

So say we all.

W. N. HAYES, *Foreman.*

On the 3rd day of July, 1911, the judgment upon the verdict of the jury was entered by the court, in words and figures as follows:

In Circuit Court, Manatee County, Florida.

ARMOUR FERTILIZER WORKS, a Corporation,
vs.
PARRISH VEGETABLE & FRUIT CO., a Corporation.

Assumpsit. Damages, $5,000.00

Now comes the above named plaintiff by E. F. Wilson and Singletary & Reaves, its attorneys, and shows to the court, that at the Springs Term of said Court, held in the said county, in March ,1911, the said cause was called for trial in regular order, and the defendant having been found in default for want of appearance as required by the law, and the court having found that due and proper service had been made upon the defendant, a default was entered against the defendant for want of appearance in open court, on Wednesday, the 29th day of March, 1911.

Thereafter, to-wit:

On Friday, the 31st day of March, 1911, the said cause was called for trial, submitted to a jury, the verdict rendered in favor of the plaintiff in due form, which was ordered recorded and a judgment entered thereupon, but on account of an oversight and omission of the clerk, the said proceedings are not shown in full upon the
5 the Minutes of the Court, but the Minutes are imperfect and incorrect and fail to show in full and at length the entry

of the said default, the record of said verdict and the entry of the judgment thereon, as will fully appear by reference to Circuit Court Minutes # 4 at page # 328 and 330, reference to which for greater certainty is hereby prayed. The plaintiff therefore moves the court to amend the said Minutes nunc-pro-tunc so as to show in full and at large the proceedings actually taken in said cause, and so that the minutes will speak the truth as to the acts and doings of the court in the aforesaid.

E. F. WILSON AND
SINGLETARY & REAVES,
Attorneys for Plaintiff.

The foregoing motion coming on this day to be heard, and it appearing to the court upon a full investigation and consideration of the entire matter, that the facts stated in said motion are true, and that the relief asked for in said motion should be granted and that the said minutes should be amended so as to show the actual proceedings taken by the court in said cause, it is therefore upon consideration, ordered and adjudged that the said minutes, so far as the same relate to this cause, be and they are hereby amended nunc-pro-tunc so as to read as follows:

WEDNESDAY, March 29, 1911.

The case of
ARMOUR FERTILIZER WORKS
vs.
PARRISH VEGETABLE & FRUIT CO.

Assumpsit. Damages, $5,000.00

Was called, and the court having found that a summons ad respondendum was duly served upon the defendant on the 24th day of February, 1911, and that said defendant was and is in default for the want of appearance in said cause, it is therefore upon motion of counsel for plaintiff, ordered and adjudged that a default be, and the same is hereby entered against the defendant, the Parrish Vegetable & Fruit Company, a corporation, for want of appearance in said case as required by law.

FRIDAY, March 31, 1911.

The case of
6 ARMOUR FERTILIZER WORKS, a Corporation, Plaintiff,
vs.
PARRISH VEGETABLE & FRUIT CO., a Corporation, Defendant.

Assumpsit. Damages, $5,000.00

Was then called, and a default having been heretofore entered the following jurors, to-wit: W. N. Hayes, W. M. Joiner, A. W.

Harris, A. J. Bear, E. F. Hurlebaus and W. M. Anderson were called and examined on their voir dire, and being found qualified, being duly sworn upon their regular oath as Petit Jurors to assess the damages in said cause, and the said jurors having heard the testimony and examined the evidence and heard the instructions of the court, rendered their verdict as follows:

In Circuit Court, Sixth Judicial Circuit, in and for Manatee County, Florida.

THE ARMOUR FERTILIZER WORKS, a Corporation, Plaintiff,

vs.

PARRISH VEGETABLE & FRUIT CO., a Corporation, Defendant.

Assumpsit. Damages, $5,000.00

We, the jury, to whom the above matter was referred for final hearing and assessment of damages, find for the plaintiff and assess the damages as follows:

For balance due on said note, February 1, 1911.....	$2,714.48
Interest to date.....	18.09
Reasonable attorney's fee.....	273.25
Total.....	$3,005.82

So say we all.

W. N. HAYES, *Foreman.*

Which having been recorded, the Court enteres its judgment as follows:

It is therefore ordered and adjudged that the plaintiff, the Armour Fertilizer Works, a corporation, do have and recover of and from the defendant, the Parrish Vegetable and Fruit Company, a corporation, its damages herein and hereby assessed at $3,005.82, together with a further sum of $6.27, as its cost in this behalf expended for which let — issue in favor of the plaintiff.

7 Done and ordered by the Court in Chambers at Bradentown, Florida, this 3rd day of July, 1911.

F. A. WHITNEY,
Judge of the Circuit Court of the Tenth Judicial Circuit.

On the 15th day of September, A. D. 1911, the plaintiff filed a præcipe for execution against the defendant corporation, in words and figures as follows:

In Circuit Court, 10th Judicial Circuit, in and for Manatee County, Florida.

ARMOUR FERTILIZER WORKS, a Corporation, Plaintiff,
vs.
THE PARRISH VEGETABLE & FRUIT CO., a Corporation, Defendant.

Assumpsit. Damages, $5,000.00

The Clerk of the above court will please issue an execution in the above cause and deliver the same to the sheriff of Manatee County, Florida, and oblige.

E. F. WILSON AND
SINGLETARY & REAVES,
Attorneys for Plaintiff.

On the 15th day of September, A. D. 1911, execution against Parrish Vegetable and Fruit Company, was issued in words and figures following:

STATE OF FLORIDA,
County of Manatee:

To all and every the sheriffs of the State of Florida, Greeting:

You are hereby commanded, That of the Goods and Chattels, Lands and Tenements of Parrish Vegetable and Fruit Co., a Corporation, you cause to be made the sum of Three Thousand and Five Dollars, and Eighty-two cents, which lately, on the 31st day of March, 1911, in our Circuit Court of Manatee County, of the State of Florida, held at the Court House in Bradentown in and for the County of Manatee, was recovered against the said Parrish Vegetable & Fruit Company, by Armour Fertilizer Works, a Corporation, for damages with legal interest thereon until paid, together
8 with Six Dollars and Twenty-seven cents, for its cost by said Armour Fertilizer Works in and about said suit, in that behalf expended, whereof the said Parrish Vegetable & Fruit Company is convicted, as appears to us of record, and that you have the same before the Judge of our said Court, at the Court House in Bradentown aforesaid, when satisfied, to satisfy the said Armour Fertilizer Works damages, interest and cost aforesaid: and have then and there this writ.

Witness, the Honorable F. A. Whitney, Judge, as also Robt. H. Roesch, Clerk, and the seal of said Court at the Court House at Bradentown, aforesaid, this 15th day of September, A. D. 1911.

[SEAL.] ROBT. H. ROESCH, *Clerk.*

Which execution was returned September 18, 1911, with the following endorsement:

Received this writ September 16, 1911, and after diligent search and inquiry am unable to find any property of the Parrish Vegetable & Fruit Company whereon to levy.

M. H. WYATT,
Sheriff Manatee County, Florida.

On the 18th day of September, A. D. 1911, the plaintiff filed a præcipe for execution against Henry L. Coe, in words and figures as follows:

In Circuit Court, 10th Judicial Circuit, in and for Manatee County, Florida.

ARMOUR FERTILIZER WORKS, a Corporation, Plaintiff,
vs.
PARRISH VEGETABLE & FRUIT CO., a Corporation, Defendant.

Assumpsit. Damages, $5,000.00.

In accordance with Chapter 2677 of the General Statutes of the State of Florida, the Clerk of the above Court is requested to issue an execution against Henry L. Coe, as one of the Stockholders in the above named defendant corporation, and place the said in the hands of the Sheriff of Manatee County, Florida.

SINGLETARY & REAVES AND
E. F. WILSON,
Attorneys for Plaintiff.

9 On the 18th day of September, A. D. 1911, execution against Henry L. Coe, was issued in words and figures following:

STATE OF FLORIDA,
County of Manatee:

To all and every the sheriffs of the State of Florida, Greeting:

You are hereby commanded, that of the Goods and Chattels, Lands and Tenements of Henry L. Coe as one of the stock holders of the Parrish Vegetable and Fruit Company, a corporation, you cause to be made an amount equal to the amount remaining unpaid upon the subscription of the said Henry L. Coe to the Stock of said corporation, the liability of said Henry L. Coe accruing through the failure of said Corporation to pay a certain Judgment for the sum of Three Thousand and Five Dollars and eighty-two cents, which lately, on the 31st day of March, 1911, in our Circuit Court of Manatee County, of the State of Florida, held at the Court House in Bradentown in and for the County of Manatee was recovered against the said Parrish Vegetable and Fruit Company, a corporation, by Armour Fertilizer Works, a corporation, for damages with legal interest thereon until paid, together with Six Dollars and Twenty-seven cents for its costs by Armour Fertilizer Works in and about said suit, in that behalf expended, whereof the said Parrish Vegetable and Fruit Company (against which an execution was issued and a returned made thereon by the sheriff of Manatee County that there is no property or effects of the Parrish Vegetable and Fruit Company whereon levy can be made to satisfy said Judgment) is convicted, as appears to us of record. And that you have the same before the Judge of our said Court, at the Court House in Braden-

town aforesaid, when satisfied, to satisfy the said Armour Fertilizer Company to the extent of the liability of said stock holder, Henry L. Coe for its damages, interest and cost aforesaid: and have then and there this writ.

Witness, the Honorable F. A. Whitney, Judge, as also Robt. H. Roesch, Clerk, and the seal of said Court at the Court House at Bradentown aforesaid, this 18th day of September, A. D. 1911.

[Seal Circuit Court of Manatee County, Florida.]

10 ROBT. H. ROESCH, *Clerk.*

(Sheriff's return on said writ as follows:)

"Received this writ Sept. 18th, 1911. Levied same May 2nd, 1912, upon Lot # 17 of Turner's Plat of Bradentown in Sec. 26 Tp. 34 S. Range 17 E. as property of Henry L. Coe.

And thereupon, on the 21st day of December, 1911, Henry L. Coe filed his petition to quash said execution, which is in words and figures following, to-wit:

In the Circuit Court of the Tenth Judicial Circuit of the State of Florida for Manatee County.

ARMOUR FERTILIZER WORKS, a Corporation,
v.
PARRISH VEGETABLE & FRUIT COMPANY, a Corporation.

Now comes H. L. Coe and shows unto the court that heretofore, to-wit, on the 31st day of March, A. D. 1911, a judgment was rendered in the above entitled cause in the above named court, and afterwards, to-wit: on the 15th day of September, A. D. 1911, an execution was issued in said cause, and placed in the hands of the sheriff of Manatee County, and on the 16th day of September, A. D. 1911, returned by the sheriff Nulla Bona; and afterwards, to-wit, on the 18th day of September, A. D. 1911, the attorneys for the plaintiff in said cause filed in said court a paper in words and figures following, to-wit:

In the Circuit Court, 10th Judicial Circuit, in and for Manatee County, Florida.

ARMOUR FERTILIZER WORKS, a Corporation, Plaintiff,
vs.
PARRISH VEGETABLE & FRUIT CO., a Corporation, Defendant.

Assumpsit. Damages, $5,000.00.

In accordance with Chapter 2677 of the General Statutes of the State of Florida, the Clerk of the above Court is requested to issue an execution against Henry L. Cie, as one of the Stockholders in

the above named defendant corporation, and place the same
11 in the hands of the Sheriff of Manatee County, Florida.

SINGLETARY & REAVES AND
E. F. WILSON,
Attorneys for Plaintiff.

And afterwards, to-wit, on the 18th day of September, A. D. 1911, an execution was issued in words and figures follows, to-wit:

STATE OF FLORIDA,
County of Manatee:

To all and every the sheriff of the State of Florida, Greeting:

You are hereby commanded, that of the Goods and Chattels, Lands, and Tenements of Henry L. Coe, as one of the stockholders of the Parrish Vegetable and Fruit Company, a corporation, you cause to be made an amount equal to the amount remaining unpaid upon the subscription of the said Henry L. Coe to the stock of said Corporation, the liability of said Henry L. Coe accruing through the failure of said Corporation, to pay a certain Judgment for the sum of Three Thousand and Five Dollars, and eighty-two cents, which lately, on the 31st day of March, 1911, in our Circuit Court of Manatee County, of the State of Florida, held at the Court House in Bradentown in and for the County of Manatee was recovered against the said Parrish Vegetable and Fruit Company, a corporation, by Armour Fertilizer Works, a corporation, for damages with legal interest thereon until paid, together with six dollars and twenty-seven cents for its costs by Armour Fertilizer Works in and about said suit, in that behalf expended, whereof the said Parrish Vegetable and Fruit Company (against which an execution was issued and a return made thereon by the Sheriff of Manatee County that there is no property or effects of the Parrish Vegetable and Fruit Company whereon levy can be made to satisfy said judgment) is convicted, as appears to us of record. And that you have the same before the Judge of our said Court, at the Court House in Bradentown aforesaid, when satisfied, to satisfy the said Armour Fertilizer Works to the extent of the liability of said stock holder, Henry L. Coe for its damages, interest and cost aforesaid: and have then and there this writ.

Witness, The Honorable F. A. Whitney, Judge, as also
12 Robt. H. Roesch, Clerk and the seal of said Court at the Court House at Bradentown aforesaid, this 18th day of September, A. D. 1911.

ROBT. H. ROESCH, *Clerk.*

That at the time of the application for the execution against your petitioner, and at the time of the issuance of the same, your petitioner was absent from the State of Florida, and had not notice of any kind or description of the application for the issuance of the execution against him, and received no notice thereof until long thereafter.

Your petitioner prays this court that it will quash said execution for the following reasons, to-wit:

1. Because the issuance of said execution amounts to the taking of the property of your petitioner without due process of law.

2. Because the statute of the State of Florida, under and by virtue of which said execution is issued violates the constitution of Florida in this, to-wit:

(*a*) Because it denies to your petitioner due process of law;

(*b*) Because it denies to your petitioner the equal protection of the laws; for the reason that the said statute does not provide for any notice to your petitioner before said execution issued; and denies to your petitioner his day in court.

3. And your petitioner further shows that the said statute of the State of Florida is in violation of the 14th Amendment to the Constitution of the United States, and particularly to that portion of said Fourteenth Amendment which provides that no state shall pass any law which denies to any person due process of law, or the equal protection of the laws.

SPARKMAN & CARTER,
Attorneys for Petitioner.

STATE OF FLORIDA,
County of Hillsborough:

Before the undersigned authority personally appeared H. L. Coe, who being duly sworn deposes and says that he has read the foregoing petition, and that he is the person named therein; and the matters and things therein stated are true.

13 HENRY L. COE.

Sworn to and subscribed before me on this 9th day of December, A. D. 1911.

[NOTARIAL SEAL.] LUCIAN C. ALGEE,
Notary Public.

And thereupon the court did enter the following judgment quashing said execution, on the 22nd day of December, 1911, in words and figures following:

The execution is quashed but not on the ground of unconstitutionality of the statute. The statute is constitutional, but the execution cannot issue till some preliminary steps are taken.

Done this 22 Dec., 1911.

F. A. WHITNEY.

Which said judgment of the court is record- in Book # 4, Circuit Court Minutes, page 547, of the public records of Manatee County, Florida.

And thereupon, on the 26th day of April, 1912, the Supreme Court of Florida issued its mandate in said cause in words and figures following:

Mandate from Supreme Court.

THE STATE OF FLORIDA:

To the Honorable the Judge of the Circuit Court for the Tenth Judicial Circuit of Florida, Greeting:

Whereas, lately in the Circuit Court of the Tenth Judicial Circuit of Florida, in and for the county of Manatee in a cause wherein Armour Fertilizer Works, a corporation, was plaintiff, and Parrish Vegetable & Fruit Company, a corporation, and Henry L. Coe, were defendants, the judgment of said Circuit Court was rendered December 22nd, 1911, as by an inspection of the transcript of the record of the said Circuit Court, which was brought into the Supreme Court of the State of Florida, by virtue of writ of error agreeably to the laws of said State in such case made and provided, fully and at large appears; and whereas, at the January Term of said Supreme Court, holden at Tallahassee, A. D. 1912, the said cause came on to be heard before the said Supreme Court on the said transcript of the record, and was argued by counsel; in consideration whereof,
14 on the 26th day of March, A. D. 1912, it was considered by said Supreme Court that the said judgment of the Circuit Court be and the same is hereby reversed; it is further ordered that the plaintiff in error do have and recover of and from the defendants in error its costs by it in this behalf expended, which costs amount to the sum of ——; therefore,

You are hereby commanded, that such further proceedings be had in said cause as according to right, justice, the judgment of said Supreme Court, and the laws of the State of Florida, ought to be had, the said judgment of the Circuit Court notwithstanding.

Witness, the Honorable James B. Whitfield, Chief Justice of said Supreme Court, at Tallahassee, this 26th day of April, 1912.

[Seal of Supreme Court of Florida.]

M. H. MABRY,
Clerk Supreme Court of Florida,
By JNO. T. CRAWLEY, *D. C.*

Which said mandate is record- in Book# 4 Circuit Court Minutes, page 539, Public Records of Manatee County, Florida.

And thereupon, on the 4th day of May, 1912, the judge of the Circuit Court for Manatee County did enter the following order upon defendant's motion to quash said execution, in words and figures following, to-wit:

In the Circuit Court of the Tenth Judicial Circuit of Florida for Manatee County.

ARMOUR FERTILIZER WORKS
v.
PARRISH VEGETABLE & FRUIT COMPANY, a Corporation, Defendant; HENRY L. COE., Defendant in Execution.

It appearing to the court that the mandate of the Supreme Court of Florida, reversing the judgment of this court heretofore entered in the above entitled cause, has been duly filed in the Clerk's office in Manatee County, and directing further proceedings in accordance with the opinion of said court therein entered, said cause coming on to be heard before this court, it is,

15 Ordered, Adjudged, and Considered by the court that the motion heretofore filed by Henry L. Coe to quash the execution be and the same is hereby denied, to which ruling of the court the said Henry L. Coe duly excepts.

Done and ordered at Chambers, this 4th day of May, A. D. 1912.

F. A. WHITNEY, *Judge.*

Which said order is duly recorded in Book # 4 Circuit Court Minutes, page 546, of the public records of Manatee County, Florida.

And thereupon the Court did make an order fixing the supersedeas bond in said cause, which is in words and figures following, to-wit:

In the Circuit Court of the Tenth Judicial Circuit in and for Manatee County.

ARMOUR FERTILIZER WORKS
v.
HENRY L. COE, Defendant in Execution.

It is ordered in the above cause, that upon the defendant entering into a bond in the penal sum of $500.00 *dollars*, conditioned to pay the plaintiff all costs and damage it may sustain in the event the judgment of this court denying the motion to quash the execution against the defendant shall be affirmed in the appellate court, and suing out a writ of error within thirty days from the date of the judgment in said cause denying the motion to quash the said writ of error, — shall operate as a supersedeas until determined by the appellate court.

Done and ordered in Chambers, this 4th day of May, A. D. 1912.

F. A. WHITNEY, *Judge.*

Which said order is duly recorded in Book # 4 Circuit Court Minutes, page 552, of the public records of Manatee County, Florida.

And thereupon on May the 10th, 1912, the defendant in execution filed his præcipe for writ of error in words and figures following, to-wit:

In the Circuit Court of the Tenth Judicial Circuit of the State of Florida in and for Manatee County.

16 ARMOUR FERTILIZER WORKS, a Corporation, Plaintiff in Execution,

v.

HENRY L. COE, Defendant in Execution.

The clerk of said court will please issue writ of error in the above entitled cause, and record the same in the minutes of the court, to the Supreme Court of the State of Florida, and will make said writ of error returnable to the first day of August, A. D. 1912, and oblige.

SPARKMAN & CARTER,
Attorneys for Henry L. Coe.

And thereupon on the 10th day of May, A. D. 1912, writ of error issued in said cause, which is in words and figures following, to-wit:

Writ of Error.

STATE OF FLORIDA, *ss:*

The State of Florida to the Judge of the Circuit Court of the Tenth Judicial Circuit of the State of Florida, Greeting:

Because in the record and proceedings and also in the rendition of judgment in a certain cause which is in our said Circuit Court before you, between Armour Fertilizer Works, Plaintiff in Execution, as Plaintiff, and Henry L. Coe, Defendant in Execution, as Defendant, manifest error hath happened, as it is said, to the great damage of the said Henry L. Coe as by his complaint appears,

We, willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that, if judgment be therein rendered, you distinctly and openly send the record and proceedings aforesaid with all things touching them, under your seal, together with this writ, to our Supreme Court of the State of Florida, so that you have the same at Tallahassee on the first day of August, A. D. 1912, in our said Supreme Court to be then and there held, that inspecting the record and proceedings aforesaid, our said Supreme Court may cause further to be done therein, to correct that error, what of right and according to law should be done.

Witness, the Honorable J. B. Whitfield, Chief Justice of
17 the said Supreme Court, and the seal of the said Circuit Court, this 10th day of May in the year of our Lord one thousand nine hundred and twelve.

[Seal of Circuit Court of Manatee County, Florida.]

ROBT. H. ROESCH,
Clerk of the Circuit Court of Manatee County,
By JAS. A. HERRIN,
Dep'ty Clerk.

(*Certificate of Recordation.*)

STATE OF FLORIDA,
Manatee County:

I, Robt. H. Roesch, Clerk Circuit Court in and for said county do hereby certify that the foregoing instrument was filed the 10th day of May, 1912, and recorded in Book Cir. Ct. Mins. # 4 page 551 this 13 day of May, 1912.

Witness my hand and official seal at Bradentown, Fla., the day and year last above written.

ROBT. H. ROESCH,
Clerk Circuit Court,
By JAS. A. HERRIN,
Dep'ty C'k.

Record Verified.

And thereupon, on May 13th, 1912, the said Henry L. Coe, together with two sureties, did execute the following supercedeas bond in said cause, which is in words and figures following, to-wit:

In the Circuit Court of the Tenth Judicial Circuit of the State of Florida in and for Manatee County.

ARMOUR FERTILIZER WORKS, a Corporation, Plaintiff in Execution,
v.
HENRY L. COE, Defendant in Execution.

Know all men by these presents, that we, Henry L. Coe, as principal, and Chas. H. Brown and R. M. Prince, as sureties are held and firmly bound unto Armour Fertilizer Works, a corporation, in the penal sum of Five Hundred Dollars, for the payment whereof well and truly to be made we bind ourselves, our heirs and administrators jointly and severally firmly by these presents.

18 Signed and seal- this 13th day of May, A. D. 1912.

The condition of the above obligation is such, that,

Whereas in the Circuit Court of the Tenth Judicial Circuit for Manatee County, Florida, judgment was rendered in the above entitled cause against the defendant and in favor of the plaintiff, and which said judgment is recorded in the Circuit Court Minutes No. 4, on page 546, and the defendant has sued out a writ of error from said judgment to the Supreme Court of Florida,

Now then if the said Henry L. Coe shall well and truly pay or cause to be paid to the Armour Fertilizer Works all costs and damage it may sustain in the event the judgment of said court is affirmed by the Supreme Court of Florida, then in that event this obligation to be void, else to remain in full force.

HENRY L. COE. [SEAL.]
CHAS. H. BROWN. [SEAL.]
R. M. PRINCE. [SEAL.]

Approved 5/15/12.
ROBT. H. ROESCH, *Clerk.*

And thereupon on the 13th day of June, 1912, the defendant in execution filed his written directions to the Clerk of making up transcript of record in said cause, which are in words and figures following, to-wit:

In the Circuit Court of the Tenth Judicial Circuit of the State of Florida in and for Manatee County.

ARMOUR FERTILIZER WORKS, a Corporation, Plaintiff in Execution,
vs.
HENRY L. COE, Defendant in Execution.

Now comes the defendant in execution, Henry L. Coe, and requests the clerk of said court to begin making up a transcript of the record in said cause for the Supreme Court of Florida on the 1st day of July, A. D. 1912, and to have said transcript in the said Supreme Court of Florida on the day that the writ of error in said cause is returnable.

In making up said transcript the Clerk of the Court will copy therein the following papers and proceedings in the cause of Armour Fertilizer Works, a corporation versus Parrish Vegetable & Fruit Company, a corporation, defendant, Henry L. Coe, defendant in execution, to-wit:

19 1. Præcipe for summons.

2. The summons ad respondendum, together with the service of the sheriff thereof.

3. The declaration.

4. The verdict of the jury.

5. The judgment of the court.

6. The præcipe for execution against the defendant corporation.

7. The execution against the defendant corporation, with the return of the sheriff thereon.

8. Præcipe for execution against Henry L. Coe.

9. Execution against Henry L. Coe, together with the levy made by the Sheriff thereunder.

10. The petition of Henry L. Coe to quash said execution.

11. The judgment of the court quashing the said execution, dated December 23rd, 1911.

12. The mandate of the Supreme Court of Florida in said cause.

13. The judgment of the Circuit Court quashing said execution.

14. The order of the Circuit Court fixing the supercedeas bond.

15. The præcipe for writ of error.

16. The writ of error, together with certificate of the clerk, showing the book and page of the record thereof where recorded in the Minutes of the Circuit Court.

17. The supercedeas bond given by Henry L. Coe.

18. These written directions for making up the transcript.

19. The assignment of errors filed with these written directions.

SPARKMAN & CARTER,
Attorneys for Henry L. Coe, Defendant in Execution.

We accept service of copy of foregoing this 13th day of June, 1912.

SINGLETARY & REAVES.

And thereupon, on the 13th day of June, A. D. 1912, the defendant in execution filed his complete assignments of error in words and figures following, to-wit:

In the Circuit Court of the Tenth Judicial Circuit of
20 the State of Florida for Manatee County.

ARMOUR FERTILIZER WORKS, a Corporation, Plaintiff in Execution,
vs.
HENRY L. COE, Defendant in Execution.

Now comes the defendant in execution in the above entitled cause, and at the time of applying for a transcript of the record in said cause for the Supreme Court of Florida, files the following complete assignment of errors in said cause.

1. The Court erred in denying the motion of the said Henry L. Coe to quash the execution issued in said cause.

SPARKMAN & CARTER,
Attorneys for Henry L. Coe, Defendant in Execution.

We accept service of copy of foregoing this 13th day of June, 1912.

SINGLETARY & REAVES.

Certificate of Clerk.

I, Robt. H. Roesch, Clerk of the Circuit Court in and for the county of Manatee, State of Florida, do hereby certify that the foregoing pages numbered from one to 24 inclusive, contain a correct transcript of the record of the judgment in the case of Armour Fertilizer Works, a corporation, plaintiff, against Henry L. Coe, Defendant in Execution, and a true and correct recital and copy of all such papers and proceedings in said cause, as appears upon the records and files of my office, that have been directed to be included in said transcript by the written demands of the said parties.

In testimony whereof I have hereunto set my hand and affixed the seal of said Circuit Court, this 17th day of July, A. D. 1912.

[Seal of Circuit Court, Manatee County, Florida.]

ROBT. H. ROESCH,
Clerk of the Circuit Court for the County of Manatee,
By S. E. COARSEY.

21 On the 28th day of January, 1913, the Supreme Court of Florida, filed its opinion in said cause, which opinion is in words and figures following, to-wit:

In the Supreme Court of Florida, January Term, A. D. 1913.

HENRY L. COE, Plaintiff in Error,
v.
ARMOUR FERTILIZER WORKS, a Corporation, Defendant in Error.

Manatee County.

COCKRELL, *J.:*

Upon the return of the mandate of this court upon the former hearing of this case, subnomine Armour Fertilizer Works v. Parish Vegetable & Fruit Co., 63 Fla. 64, 58 South. Rep. 231, a judgment was entered denying the motion to quash the execution issued against Henry L. Coe, as a stockholder of the Vegetable Company, which had no assets whereon to levy. To this judgment Coe prosecutes his writ of error.

Coe does not claim that he was in fact a stockholder, nor that there remains no balance due upon his stock, nor seek to interpose any of the defenses pointed out as open to him upon the former hearing, but stands boldly on his attack upon the constitutionality of the act and by a proceeding unknown to our practice. There does not appear to have been any forcible seizure of any property of the said Coe, other than the formal levy upon realty, which does not interfere with the owner's possession.

The statute presents many difficulties, that may arise as to others not similarly situated, and may as such be beyond the power of the legislature; but the party now before this court has not brought himself within the class who may justly complain, and the judgment as to him, upon the authority of our former holding, is, therefore, affirmed.

Shackleford, C. J., and Taylor, Hocker, and Whitfield, JJ., concur.

22 On the 28th day of January, 1913, the following judgment was entered upon the foregoing opinion of the court:

HENRY L. COE, Plaintiff in Error,
v.
ARMOUR FERTILIZER WORKS, a Corporation, Defendant in Error.

Writ of Error to a Judgment of the Circuit Court Within and for the County of Manatee.

This cause having been submitted to the court at a former term thereof upon the transcript of the record of the judgment aforesaid, and argument of counsel for the respective parties, and the record having been seen and inspected, and the court being now advised of its judgment to be given in the premises, it seems to the court that there is no error in the said judgment; it is therefore considered, ordered and adjudged by the court that the said judgment of the Circuit Court be and the same is hereby affirmed; it is further

ordered that the defendant in error do have and recover of and from the plaintiff in error, its costs by it in this behalf expended, which costs are taxed at the sum of —— Dollars; all of which is ordered to be certified to the court below.

The opinion of the court in this cause was this day read by Mr. Justice Cockrell and ordered to be filed.

23 On the 17th day of March, A. D. 1913, the Plaintiff in Error, Henry L. Coe, filed in the Supreme Court of Florida, his petition for Writ of Error to the Supreme Court of the United States, which petition is in words and figures following, to-wit:

In the Supreme Court of the State of Florida.

HENRY L. COE, Defendant in Execution, Plaintiff in Error,
versus
ARMOUR FERTILIZER WORKS, a Corporation, Plaintiff in Execution, Defendant in Error.

To the Honorable Chief Justice of the Supreme Court of the State of Florida:

Now comes Henry L. Coe, defendant in execution, and plaintiff in error in the above entitled cause, and shows unto the Court, that in said cause he objected to the issuance of an execution against him as a stockholder of a certain corporation called the Parrish Vegetable & Fruit Company, upon the ground that the statute of the State of Florida authorizing the issuance of said execution against him, to-wit, Chapter 5892 of the Acts of 1909 of the State of Florida, was in violation of the Fourteenth Amendment to the Constitution of the United States, in that the said Act failed to provide for any notice being given to a stockholder previous to the issue of an execution; and further, that the said Act failed to provide any method or means of judicially ascertaining that the person against whom the execution was requested was a stockholder of said corporation; and further failed to provide for the determination, judicially, of the amount due by any person upon any stock subscription, and particularly to that portion of the said Fourteenth Amendment which provides that no state shall pass any law which denies to any person due process of law, or the equal protection of the laws; and the judgment of the Supreme Court of Florida was

24 that the said act was constitutional and within the power of the state, and did not deny to your said petitioner due process of law, and the equal protection of the laws; and the said Henry L. Coe deems himself aggrieved by the decision of the said Supreme Court of Florida, and that he has been denied the protection of the Constitution of the United States, as herein stated, wherefore he prays that your Honor will grant to him a Writ of Error to the Supreme Court of the United States to have reviewed the judgment of the said Supreme Court of Florida; and that said Writ of Error be made returnable within thirty days from the date of its issue; and that upon the issuing of said writ of error a cita-

tion may be issued, as required by law; and he further prays that this Court will fix the terms and conditions of a bond that will operate as a supercedeas, pending the decision of the writ of error by the Supreme Court of the United States; and your petitioner will ever pray.

SPARKMAN & CARTER,
Attorneys for Petitioner.

25 On the same day, to-wit, the 17th day of March, A. D. 1913, the said Henry L. Coe filed in the Supreme Court of Florida, his assignment of errors, which is in words and figures following, to-wit:

In the Supreme Court of the State of Florida.

HENRY L. COE, Defendant in Execution, Plaintiff in Error,
versus
ARMOUR FERTILIZER WORKS, a Corporation, Plaintiff in Execution, Defendant in Error.

Now comes Henry L. Coe, and upon presenting a petition for Writ of Error in said cause to the Supreme Court of the United States, *and* assigns the following errors, to-wit:

1. The court erred in its judgment in said cause in holding that Chapter 5892 of the Acts of 1909 of the State of Florida, under and by which the execution in said cause was issued against him, did not violate the Fourteenth Amendment to the Constitution of the United States, and particularly that portion of said amendment which provides that no state shall deprive any person of property without due process of law, nor shall any state pass any law which denies to any person the equal protection of the laws.

SPARKMAN & CARTER,
Attorneys for Plaintiff in Error.

26 That on the 17th day of March, A. D. 1913, the Hon. Thomas M. Shackleford, Chief Justice of the Supreme Court, made an order allowing the writ of error, and citation, and supercedeas bond, which is in words and figures following to-wit:

In the Supreme Court of the State of Florida.

HENRY L. COE, Defendant in Execution, Plaintiff in Error,
versus
ARMOUR FERTILIZER WORKS, a Corporation, Plaintiff in Execution, Defendant in Error.

This cause coming on to be heard upon the application of Henry L. Coe for a Writ of Error to the Supreme Court of the United States, and a citation, and other relief, it is ordered by the court that a Writ of Error as prayed for in said petition and Citation be allowed.

It is further ordered, that Whereas the said Henry L. Coe has executed a bond to the Armour Fertilizer Works, a corporation, in

the penal sum of Five Hundred ($500.00) dollars, conditioned as required by law, that said Writ of Error do operate as a stay of all proceedings pending the decision of said cause by the Supreme Court of the United States.

Done and ordered this 17th day of March, 1913.

THOMAS M. SHACKLEFORD,
Chief Justice of the Supreme Court of the State of Florida.

27 And on the said 17th day of March, A. D. 1913, the said Henry L. Coe filed his supercedeas bond in said court in words and figures following, to-wit: and on which said date said bond was duly approved by the Chief Justice of the Supreme Court of Florida.

In the Supreme Court of the State of Florida.

HENRY L. COE, Defendant in Execution, Plaintiff in Error,
versus
ARMOUR FERTILIZER WORKS, a Corporation, Plaintiff in Execution, Defendant in Error.

Bond.

Know all men by these presents that we, Henry L. Coe, as principal, and the Fidelity and Deposit Company of Maryland, a corporation, as surety, are held and firmly bound unto the Armour Fertilizer Works, a corporation, in the penal sum of Five Hundred dollars, for the payment whereof well and truly to be made we find ourselves, administrators, successors and assigns, jointly and severally, firmly by these presents.

Signed and sealed this 17 day of March, A. D. 1913.

The condition of the above obligation is such, that,

Whereas in a certain cause pending in the Supreme Court of Florida wherein Henry L. Coe, defendant in execution, is plaintiff in error, and Armour Fertilizer Works, a corporation, plaintiff in execution, is defendant in error, the said Henry L. Coe has sued out a writ of error from the judgment rendered against him in the Supreme Court of Florida, to the Supreme Court of the United States,

Now therefore the condition of this obligation is such, that if the above named Henry L. Coe shall prosecute his said writ of error to effect, and answer all costs if he shall fail to make good his plea, then this obligation to be void, otherwise to remain in full force and virtue.

HENRY L. COE, [SEAL.]
By W. A. CARTER,
Attorney-in-Fact.
FIDELITY & DEPOSIT COMPANY OF MARYLAND,
By E. W. MONROSE, [SEAL.]
Agt. & Att'y.

Taken before and approved by me this 17th day of March, A. D. 1913.

THOMAS M. SHACKLEFORD,
Chief Justice of the Supreme Court of Florida.

28 And on the same date, to-wit, the 17th day of March, 1913, the said Henry L. Coe filed with the clerk of said court a power of attorney authorizing the said W. A. Carter to execute said supercedeas bond for the said Henry L. Coe, in words and figures following:

I, Henry L. Coe, do hereby make, constitute and appoint W. A. Carter, my true and lawful attorney, for me and in my name and stead to sign, seal and deliver any bond required by the Supreme Court of the State of Florida to operate as a supercedeas upon the Writ of Error issued or to be issued in the case of Henry L. Coe, Defendant in execution, Plaintiff in error, versus Armour Fertilizer Works, a corporation, Plaintiff in execution, Defendant in error, lately pending in the Supreme Court of the State of Florida.

In witness whereof I have hereunto set my hand and seal, this 14th day of March, A. D. 1913.

HENRY L. COE. [SEAL.]

Attest:
F. E. MULLER.
LUCIAN C. ALGEE.

STATE OF FLORIDA,
County of Hillsborough:

I hereby certify on this 14th day of March, A. D. 1913, before me personally came Henry L. Coe, to me well known to be the person described in and who executed the foregoing instrument and acknowledged the execution thereof.

Witness my hand and official seal the date aforesaid.

[NOTARIAL SEAL.] LUCIAN C. ALGEE,
Notary Public.

29 On the same day, to-wit, on the 17th day of March, A. D. 1913, the said Henry L. Coe filed in the Supreme Court of Florida his directions to the Clerk for making up the transcript of the record, which are in words and figures following, to-wit:

In the Supreme Court of Florida.

HENRY L. COE, Defendant in Execution, Plaintiff in Error,
vs.
ARMOUR FERTILIZER WORKS, a Corporation, Plaintiff in Execution, Defendant in Error.

The clerk of said court is hereby requested in making up the transcript of record in said cause for the Supreme Court of the

United States to incude in said transcript the following papers, to-wit:

1. The entire transcript of record filed in the Supreme Court of Florida in the above entitled cause in pursuance to the Writ of Error issued to the Circuit Court of Manatee County, Florida.

2. The judgment of the Supreme Court of Florida.

3. The Petition filed by Henry L. Coe for Writ of Error on March 17th, 1913.

4. The Assignment of Errors filed by the said Henry L. Coe at the time of filing his petition for Writ of Error.

5. The order of the Chief Justice of the Supreme Court of Florida allowing said Writ of Error and citation, and fixing supercedeas bond, made on the 17th day of March, 1913.

6. The supercedeas bond filed on the 17th day of March, 1913, together with the power of attorney filed therewith, and the approval of said bond by the Chief Justice of the Supreme Court of Florida.

7. These directions for making up the record, together with proof of service thereof.

8. You will also make and forward with the transcript a copy of the opinion of the Supreme Court of Florida in this cause, and a copy of the opinion of the Supreme Court of Florida in the former appeal in this cause, rendered March 26, 1912.

CLARKMAN & CARTER,
J. L. COLLIER,
Attorneys for Plaintiff in Error.

30 STATE OF FLORIDA,
County of Manatee:

Before the undersigned authority personally appeared J. L. Collier, who being duly sworn says he is of counsel for Henry L. Coe in the above entitled cause, and that on the 19th day of March, A. D. 1913, he delivered to Jno. B. Singletary a member of the firm of Singletary & Reaves, attorneys for Armour Fertilizer Works in said cause, a true copy of the directions to the clerk of the Supreme Court of Florida for making up transcript of record in said cause.

J. L. COLLIER.

Sworn to and subscribed before me on this 20th day of March, A. D. 1913.

[NOTARIAL SEAL.] LUCH E. WILSON,
Notary Public.

My commission expires November 6, 1916.

31 In the Supreme Court of Florida, January Term, A. D. 1912.

ARMOUR FERTILIZER WORKS, a Corporation, Plaintiff in Error,
v.
PARRISH VEGETABLE AND FRUIT COMPANY, a Corporation, and HENRY L. COE, Defendants in Error.

Manatee County.

WHITFIELD, *C. J.*:

The plaintiff in error recovered a judgment in the Circuit Court for Manatee County against the Parrish Vegetable and Fruit Company. Execution on the judgment issued against the corporation was duly returned nulla bona. Thereupon an execution was issued under Chapter 5892 Acts of 1909 against Henry L. Coe as one of the stockholders of the Parrish Vegetable and Fruit Company, a corporation, for an amount equal to the amount remaining unpaid upon the subscription of Henry L. Coe to the stock of said corporation, the execution against the corporation for its indebtedness having been returned nulla bona. Henry L. Coe then filed a petition in the same court setting up the judgment against the corporation, the return of nulla bona thereon and the issue of the execution against Coe as a stockholder of the judgment defendant corporation and alleging "that at the time of the application for the execution against your petitioner, and at the time of the issuance of the same, your petitioner was absent from the State of Florida and had no notice of any kind or description of the application for the issuance of the execution against him, and received no notice thereof until long thereafter.

Your petitioner prays this court that it will quash said execution for the following reasons, to-wit:

1. Because the issuance of said execution amounts to the taking of the property of your petitioner without due process of law.

2. Because the statute of the state of Florida, under and by virtue of which said execution is issued violates the constitution of Florida, in this, to-wit:

32 (*a*) Because it denies to your petitioner due process of law.

(*b*) Because it denies to your petitioner the equal protection of the laws; for the reason that the said statute does not provide for any notice to your petitioner before said execution issued; and denies to your petitioner his day in court.

3. And your petitioner further shows that the said statute of the State of Florida is in violation of the 14th Amendment to the Constitution of the United States, and particularly to that portion of said Fourteenth Amendment which provides that no State shall pass any law which denies to any person due process of law, or the equal protection of the laws."

The court entered the following judgment. "The execution is quashed, but not on the grounds of unconstitutionality of the statute. The statute is constitutional but the execution can not issue till some preliminary steps are taken."

A writ of error to this judgment was taken.

The judgment rendered may be reviewed here even though it was not excepted to, and even though all the proceedings and the evidence are not before us. If there is error in the judgment as matter of law the absence of the evidence and of motions and affidavits is not material.

As the court held "the statute is constitutional but the execution cannot issue till some preliminary steps are taken," the question to be determined is whether under the law any preliminary steps are required to be taken before execution may issue against a stockholder. The statutes controlling the subject are as follows:

"If any execution shall issue against the property or effects of any corporation, and there cannot be found whereon to levy, then such execution may be issued against any of the stockholders to an extent equal in amount for so much as may remain unpaid upon their subscription to capital stock and no further. Chapter 5892 Acts of 1909.

"The clerk or other officers having charge of the books, records and papers of any corporation, on demand of any officer holding execution against the same, shall furnish such officer with the name, places of residence and the amount of liability of every
33 person liable as aforesaid, and if such officer refuses so to do, he shall, upon complaint thereof, be liable to a fine not exceeding five hundred dollars." Sec. 2678 Gen. Stats. of 1906.

These statutes do not require any preliminary steps to be taken before an execution may be issued against a stockholder to be enforced "to an extent equal in amount for so much as may remain unpaid upon his subscription to capital stock and no further," after an execution against the corporation has been returned nulla bona. There is no general law or rule requiring notice to be given to the stockholder before execution is issued against him.

A stockholder of a corporation becomes such charged with knowledge that under the statute upon the return of nulla bona upon an execution issued against the corporation an execution may be issued against him for the unpaid subscription to the stock he holds. As to the construction put upon Section 2677 prior to its amendment see Knight & Wall Co. v. Tampa Sand Lime Brick Co., 55 Fla. 728, 46 South. Rep. 285. The statute above quoted affords the means by which the officer holding the execution may obtain definite information as to the stockholders and the unpaid subscription on the stock. If the person against whom the execution is issued is not in fact a holder of stock upon which there is unpaid subscription, or if the amount of the execution is in excess of the unpaid subscription, the stockholder may have appropriate relief under the statute providing for the testing of the legality of executions. See Sections 1624 and 1625 Gen. Stats. of 1906.

The judgment quashing the execution is reversed.

All concur.

34 I, M. H. Mabry, Clerk of the Supreme Court of the State of Florida, Do Hereby Certify that the foregoing pages numbered from one to 33 inclusive, contain true and correct copies of the transcript of record filed in the Supreme Court of Florida in

the case of Henry L. Coe, Plaintiff in Error, against Armour Fertilizer Works, Defendant in Error, and the judgment and opinion of said Supreme Court of Florida; and also a true and correct copy of the petition for Writ of Error to the Supreme Court of Florida, Assignment of Errors filed by Henry L. Coe at the time of filing said petition, Order of the Chief Justice of the Supreme Court allowing writ of error and citation, and fixing supercedeas bond, Supercedeas Bond filed on March 17th, together with Power of Attorney filed therewith, and the approval of said bond by the Chief Justice of the Supreme Court of Florida; Directions for making up transcript of record, together with proof of service thereof; and also of transcript of copy of the opinion of the Supreme Court of Florida in this cause, and a copy of the opinion of the Supreme Court of Florida in the former appeal in this cause rendered March 26, 1912, as appears from the originals now on file and of record in my office as Clerk of the Supreme Court of said State.

Witness my hand and seal of the Supreme Court of Florida, at Tallahassee, the capital, this 28th day of March, A. D. 1913.

[Seal Supreme Court of the State of Florida.]

M. H. MABRY,
Clerk of Supreme Court of Florida.

35 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Armour Fertilizer Works, a Corporation, and Singletary & Reaves, its Attorneys:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held in the City of Washington, D. C., within thirty days from the date of this writ, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of the State of Florida at Tallahassee, in a certain cause wherein Henry L. Coe, Defendant in Execution, is Plaintiff in Error, and Armour Fertilizer Works, a corporation, Plaintiff in Execution, is Defendant in Error, to show cause, if any there be, why the judgment in said Writ of Error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Edward D. White, Chief Justice of the Supreme Court of the United States, this 17th day of March, A. D. 1913.

THOMAS M. SHACKLEFORD,
Chief Justice of the Supreme Court of the State of Florida.

[Seal Supreme Court of the State of Florida.]

Attest:
M. H. MABRY,
Clerk of the Supreme Court of the State of Florida.

35½ Received this Writ March 19th, 1913, and executed the same March 24th, 1913, by exhibiting the original and delivering a true copy thereof to John B. Singletary a member of the firm of Singletary & Reaves, attorneys of record for the Armour

Fertilizer Works, a corporation, executing the same in Manatee County, Florida.

Dated this 24 day of March, A. D. 1913.

JOHN F. HORR,
United States Marshal, Southern District of Florida,
By C. B. BRISTOL,
Deputy U. S. Marshal.

36 [Endorsed:] Henry L. Coe, Plff. in Err. vs. Armour Fertilizer Wks., Deft. in Error. Citation.

37 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Supreme Court of the State of Florida, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea which is in the said Supreme Court of the State of Florida, before you, or some of you, being the highest court of the law or equity of the said state in which a decision could be had in the said suit between Henry L. Coe, defendant in execution, plaintiff in error, and Armour Fertilizer Works, a corporation, plaintiff in execution, defendant in error, wherein was drawn in question the validity of a statute of the said state on the ground of its being repugnant to the Fourteenth Amendment of the Constitution of the United States and said decision was in favor of the validity of said statute, a manifest error hath happened to the great damage of the said Henry L. Coe, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, D. C., on the 15th day of April next in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct said error, what of right and according to the laws and customs of the United States should be done.

38 Witness the Hon. Edward D. White, Chief Justice of the Supreme Court of the United States, the 17 day of March, A. D. 1913.

[Seal U. S. District Court, Southern District of Florida.]

F. W. MARSH,
Clerk of the District Court of the United States of the Northern District of Florida,
By GUY H. P. McCORD, *D. C.*

Allowed by
THOMAS M. SHACKLEFORD,
Chief Justice of the Supreme Court of the State of Florida.

Endorsed on cover: File No. 23,616. Florida Supreme Court. Term No. 140. Henry L. Coe, plaintiff in error, vs. Armour Fertilizer Works. Filed April 4th, 1913. File No. 23,616.

INDEX TO BRIEF.

	Page.
Statement of case	1
Statute attacked as unconstitutional, as violating the Fourteenth Amendment to the Constitution of the United States.	7
Statutes of Florida referred to in brief	8
Argument	11
Assignment of error	11
Cases cited as to unconstitutionality of Florida act:	
In re Rosser, 101 Fed. Repr., 562, text 567	13
Louisville Trust Co. vs. Leonard Comingor, 22d Sup. Court Repr., 293	13
Rouse, Hazzard & Co. vs. Donovan, 62 N. W., 359	13
Lauder vs. Tillia, 11 Atl., 86	13
Lauder vs. Logan, 16 Atl., 44	13
Wilson vs. Seligman, 36 Fed. Repr., 154	13
Pennoyer vs. Neff, 95 U. S., 714	13
Authorities cited to show that notice to stockholder is necessary to charge him for corporate debts:	
Thompson on Corporations, secs. 3591, 3598, 3602, and 3596.	15
Cases cited and criticised relied upon by defendant in error:	
Hampson vs. Weare, 4 Iowa, 12	16
Donworth & Beahan vs. Coolbaugh, 5 Iowa, 300	17
Bank of Columbia vs. O'Kely, 4 Wheat., 326	17
Bernheimer vs. Converse, 27 Sup. Court Repr., 755	18
Straw & E. M. F. G. Co. vs. L. D. Kilbourne Boot & Shoe Co., 80 Minn., 125	18
Opinions of the supreme court of Florida in the case at bar	19

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.

No. 140.

HENRY L. COE, PLAINTIFF IN ERROR,

vs.

ARMOUR FERTILIZER WORKS, DEFENDANT IN ERROR.

BRIEF OF PLAINTIFF IN ERROR.

Statement.

The Armour Fertilizer Works, a corporation, hereinafter called "Fertilizer Works," sued the Parrish Vegetable & Fruit Company, a corporation under the laws of Florida, hereinafter called the "Vegetable Company," in the Circuit Court of Manatee County, Florida, upon a promissory note executed by the Vegetable Company to the Fertilizer Works and guaranteed by C. P. Parrish, L. Simms, C. W. Parrish, K. S. Parrish, and Jesse Simms.

The service in the above suit was made upon C. P. Parrish, as president of the Vegetable Company.

The suit resulted in a judgment in favor of the Fertilizer Works and against the Vegetable Company for the sum of three thousand five and 82/100 ($3,005.82) dollars and costs.

An execution was issued against the Vegetable Company on September 15, and on September 16 the execution was returned to the sheriff *nulla bona*. On September 18, 1911, the plaintiff filed a præcipe with the clerk of the Circuit Court of Manatee County as follows, to wit:

"Circuit Court of the Tenth Judicial Circuit in and for Manatee County, Florida.

"ARMOUR FERTILIZER WORKS, *a Corporation,*
vs.
"PARRISH VEGETABLE & FRUIT COMPANY, *a Corporation.*

"Assumpsit. Damages, $5,000.

"In accordance with chapter 2677 of the General Statutes of the State of Florida, the clerk of the above court is requested to issue an execution against Henry L. Coe, as one of the stockholders in the above-named defendant corporation, and place the said in the hands of the sheriff of Manatee County, Florida."

On the same day an execution was issued in accordance with the above præcipe in words and figures following:

"STATE OF FLORIDA,
County of Manatee:

"To all and every the sheriffs of the State of Florida, Greeting:

"You are hereby commanded, that of the goods and chattels, lands and tenements of Henry L. Coe as one of the stockholders of the Parrish Vegetable and Fruit Company, a corporation, you cause to be made an amount equal to the amount remaining unpaid upon the subscription of the said Henry L. Coe to the stock of said corporation, the liability of said Henry L. Coe accruing through the failure of said corporation to pay a certain judgment for the sum of three thousand and five dollars and eighty-two cents, which lately, on the 31st day of March, 1911, in our

Circuit Court of Manatee County, of the State of Florida, held at the court house in Bradentown in and for the county of Manatee was recovered against the said Parrish Vegetable and Fruit Company, a corporation, by Armour Fertilizer Works, a corporation, for damages with legal interest thereon until paid, together with six dollars and twenty-seven cents for its costs by Armour Fertilizer Works in and about said suit, in that behalf expended, whereof the said Parrish Vegetable and Fruit Company (against which an execution was issued and a return made thereon by the sheriff of Manatee County that there is no property or effects of the Parrish Vegetable and Fruit Company whereon levy can be made to satisfy said judgment) is convicted, as appears to us of record. And that you have the same before the judge of our said court, at the court house in Bradentown aforesaid, when satisfied, to satisfy the said Armour Fertilizer Company to the extent of the liability of said stockholder, Henry L. Coe for its damages, interest and cost aforesaid, and have then and there this writ.

"Witness, the Honorable F. A. Whitney, judge, as also Robt. H. Roesch, clerk, and the seal of said court at the court house at Bradentown aforesaid, this 18th day of September, A. D. 1911.

[Seal Circuit Court of Manatee County, Florida.]

"ROBT. H. ROESCH, *Clerk.*"

On the same day the sheriff made the following return upon said execution:

"Received this writ Sept. 18th, 1911. Levied same May 2, 1912, upon lot No. 17 of Turner's plat of Bradentown in Sec. 26, Tp. 34 S., range 17 E., as property of Henry L. Coe."

On the 12th day of December, 1911, Henry L. Coe filed a petition to quash said execution in words and figures following, to-wit:

"In the Circuit Court of the Tenth Judicial Circuit of the State of Florida for Manatee County.

"ARMOUR FERTILIZER WORKS, *a Corporation,*
vs.
"PARRISH VEGETABLE & FRUIT COMPANY, *a Corporation.*

"Now comes H. L. Coe and shows unto the court that heretofore, to wit, on the 31st day of March, A. D. 1911, a judgment was rendered in the above-entitled cause in the above-named court, and afterwards, to wit, on the 15th day of September, A. D. 1911, an execution was issued in said cause, and placed in the hands of the sheriff of Manatee County, and on the 16th day of September, A. D. 1911, returned by the sheriff *nulla bona.*"

And afterwards, to wit, on the 18th day of September A. D. 1911, the attorneys for the plaintiff in said cause filed in said court a paper in words and figures following, to wit:

"In the Circuit Court, 10th Judicial Circuit, in and for Manatee County, Florida.

"ARMOUR FERTILIZER WORKS, *a Corporation, Plaintiff,*
vs.
"PARRISH VEGETABLE & FRUIT CO., *a Corporation, Defendant.*

"Assumpsit. Damages, $5,000.

"In accordance with chapter 2677 of the General Statutes of the State of Florida, the clerk of the above court is requested to issue an execution against Henry L. Coe, as one of the stockholders in the above-named defendant corporation, and place the same in the hands of the sheriff of Manatee County, Florida.

"SINGLETARY & REAVES AND
"E. F. WILSON,
"Attorneys for Plaintiff."

And afterwards, to wit, on the 18th day of September, A. D. 1911, an execution was issued in words and figures following, to wit:

"STATE OF FLORIDA,
"County of Manatee:

"To all and every the sheriff of the State of Florida, Greeting:

"You are hereby commanded, that of the goods and chattels, lands, and tenements of Henry L. Coe, as one of the stockholders of the Parrish Vegetable and Fruit Company, a corporation, you cause to be made an amount equal to the amount remaining unpaid upon the subscription of the said Henry L. Coe to the stock of said corporation, the liability of said Henry L. Coe accruing through the failure of said corporation, to pay a certain judgment for the sum of three thousand and five dollars, and eighty-two cents, which lately, on the 31st day of March, 1911, in our Circuit Court of Manatee County, of the State of Florida, held at the court house in Bradentown in and for the county of Manatee was recovered against the said Parrish Vegetable and Fruit Company, a corporation, by Armour Fertilizer Works, a corporation, for damages with legal interest thereon until paid, together with six dollars and twenty-seven cents for its costs by Armour Fertilizer Works in and about said suit, in that behalf expended, whereof the said Parrish Vegetable and Fruit Company (against which an execution was issued and a return made thereon by the sheriff of Manatee County that there is no property or effects of the Parrish Vegetable and Fruit Company whereon levy can be made to satisfy said judgment) is convicted, as appears to us of record. And that you have the same before the judge of our said court, at the court house in Bradentown aforesaid, when satisfied, to satisfy the said Armour Fertilizer Works to the extent of the liability of said stockholder, Henry L. Coe, for its damages, interest and cost aforesaid, and have then and there this writ.

"Witness the Honorable F. A. Whitney, judge, as also Robt. H. Roesch, clerk, and the seal of said

court at the court house at Bradentown aforesaid, this 18th day of September, A. D. 1911.

"ROBT. H. HOESCH, *Clerk.*"

"That at the time of the application for the execution against your petitioner, and at the time of the issuance of the same, your petitioner was absent from the State of Florida, and had not notice of any kind or description of the application for the issuance of the execution against him, and received no notice thereof until long thereafter.

"Your petitioner prays this court that it will quash said execution for the following reasons, to wit:

"1. Because the issuance of said execution amounts to the taking of the property of your petitioner without due process of law.

"2. Because the statute of the State of Florida, under and by virtue of which said execution is issued, violates the constitution of Florida in this, to wit:

"(*a*) Because it denies to your petitioner due process of law.

"(*b*) Because it denies to your petitioner the equal protection of the laws; for the reason that the said statute does not provide for any notice to your petitioner before said execution issued; and denies to your petitioner his day in court.

"3. And your petitioner further shows that the said statute of the State of Florida is in violation of the 14th Amendment to the Constitution of the United States, and particularly to that portion of said Fourteenth Amendment which provides that no State shall pass any law which denies to any person due process of law, or the equal protection of the laws.

"SPARKMAN & CARTER,
Attorneys for Petitioner.

"STATE OF FLORIDA,
"County of Hillsborough:

"Before the undersigned authority personally appeared H. L. Coe, who being duly sworn deposes and says that he has read the foregoing petition, and that he is the person named therein; and the matters and things therein stated are true.

"HENRY L. COE.

"Sworn to and subscribed before me on this 9th day of December, A. D. 1911.

"[NOTARIAL SEAL.] "LUCIAN C. ALGEE,
"Notary Public."

On the 22nd day of December, 1911, the judge of the Circuit Court of Manatee County, upon a hearing upon said petition, made the following order, to wit:

> "The execution is quashed, but not on the ground of unconstitutionality of statute. The statute is constitutional, but the execution cannot issue till some proper steps are taken.
>
> "F. A. WHITNEY, *Judge."*

From this order of the court the Fertilizer Works appealed to the Supreme Court of Florida, and the Supreme Court reversed the order of the circuit judge and remanded the said cause for further proceedings, rendering an opinion sustaining the constitutionality of the statute, the opinion being found on page 24 of the record.

Afterwards, on the 4th day of May, A. D. 1912, this cause coming on to be heard upon the mandate of the Supreme Court the judge of the circuit court rendered the following order, to wit:

> "It appearing to the court that the mandate of the Supreme Court of Florida reversing the judgment of this court heretofore entered, has been duly filed in the clerk's office in Manatee County, and directing further proceedings in accordance with the opinion of said court therein entered; said cause coming on to be heard, it is,
>
> "Ordered, adjudged and considered by the court that the motion heretofore filed by Henry L. Coe to quash the execution be and the same is hereby denied, to which ruling of the court the said Henry L. Coe duly excepts."

And thereupon Henry L. Coe sued out a writ of error to the Supreme Court of Florida from this judgment. And

afterwards the Supreme Court of Florida sustained this judgment of the circuit court and rendered an opinion of the court, found on page 18 of the record.

From this last judgment of the Supreme Court, Henry L. Coe sued out a writ of error to this court and assigned the following errors, to wit (see page 20 of the record):

> "The court erred in its judgment in said cause in holding that chapter 5892 of the acts of 1909 of the State of Florida, under and by which the execution in said cause was issued against him did not violate the 14th Amendment to the Constitution of the United States and particularly that portion of said amendment which provides that no State shall deprive any person of property without due process of law nor shall any State pass any law which denies to any person the equal protection of the laws."

The statutes of the State of Florida to be considered are as follows:

The act under which the execution was issued, being chapter 5892 of the acts of 1909, reading as follows:

> *"Be it enacted by the Legislature of the State of Florida:*
>
> "SECTION 1. That section 2677 of the General Statutes of the State of Florida relative to the issuing of execution against stockholders of corporations be amended so as to read as follows:
>
> "2677 (2152). MAY ISSUE AGAINST STOCKHOLDERS.—If any execution shall issue against the property or effects of any corporation, and there cannot be found whereon to levy, then such execution may issue against any of the stockholders to an extent equal in amount for so much as may remain unpaid upon their subscription to the capital stock, and no further."

Also section 2677, General Statutes of 1906, reading as follows:

> "If any execution shall issue against the property or effects of any corporation, and there cannot be

found whereon to levy, then such execution may issue against any of the stockholders to an extent equal in amount for so much as may remain unpaid upon the subscription, and no further; and all property, whether real or personal, of any stockholder in any corporation aforesaid, shall be exempt from the debts and liabilities of such corporation contracted in its corporate capacity, except the stock of said stockholder of or in said corporation to the extent mentioned aforesaid."

Also section 2678 of the General Statutes passed in 1906:

"The clerk or other officer having charge of the books, records and papers of any corporation, on demand of any officer holding execution against the same, shall furnish such officer with the name, place of residence and the amount of liability of any person liable as aforesaid, and, if such officer refuse so to do, he shall, upon complaint thereof, be liable to a fine not exceeding $500.00."

Also section 59 of the General Statutes of Florida, passed in 1906, as follows:

"The common and statute laws of England, which are of a general and not a local nature, with the exceptions hereinafter mentioned, down to the 4th day of July, 1776, be and the same are hereby declared to be of force in this State, provided the said statutes and common law be not inconsistent with the Constitution and laws of the United States and the acts of the legislature of this State."

Also section 9 of chapter 3165, Laws of 1879, reading as follows:

"If any execution shall have been issued against the property or effects of any corporation, and if these cannot be found whereon to levy, then such execution may issue against any of the stockholders to an extent equal in amount to the amount of stock by him owned, together with any amount unpaid thereon; provided, that no execution shall issue against any

stockholder except upon order of the court in which the action, suit or other proceeding shall have been brought or instituted, made upon motion in open court after good and sufficient notice in writing to the person upon whom the execution is desired; and upon such motion, the court may order execution to issue accordingly."

Also section 1624 of the General Statutes of 1906, reading as follows:

"1624 (1195). Upon Affidavit of Illegality and Bond.—If any execution shall issue illegally, the defendant in execution, his agent or attorney, may procure a stay of the same by making and delivering to the officer having the execution an affidavit stating the illegality and whether any part of the execution be due, and a bond payable to the plaintiff with two good and sufficient sureties in double the amount of the execution or the part of which a stay is sought. Upon receipt of such affidavit and bond the officer shall stay any proceeding on the execution and return the bond and affidavit to the court from which the execution issued, and such court shall pass upon the question of illegality as soon as possible. If the execution be adjudged illegal in any part the court shall make an order staying it as to such part, but if it be adjudged legal in whole or in part, the court shall (or if it has a clerk, shall direct such clerk to) enter up judgment against the principal and sureties on such bond for the amount of so much of the execution as shall be adjudged to be legal, and execution shall forthwith issue thereon."

Also section 1625 of the General Statutes of 1906, reading as follows:

"1625 (1196). Upon Motion.—The court before which an execution is returnable may, on a motion and notice to the adverse party, for good cause, upon such terms as the court may impose, direct a stay of the same, and the suspension of proceedings thereon."

ARGUMENT.

This court has frequently decided that, in determining whether a statute of a State violates the Constitution of the United States, the State statute will receive the construction put upon it by the highest court of the State. Therefore, in the discussion of this case, to determine the constitutionality of chapter 5892 of the acts of 1909, under which the execution in this case was issued against the plaintiff in error, Henry L. Coe, this court will adopt the construction placed upon said statute by the two opinions rendered by the Supreme Court of Florida, the first of which is found on page 24 of the transcript, and the second of which is found on page 18 of the transcript, the case having been before the Supreme Court of Florida twice.

The assignment of error which this court is to pass upon is found on page 20 of the record, and reads as follows, to wit:

> "The court erred in its judgment in said cause in holding that chapter 5892 of the acts of 1909, of the State of Florida, under and by which the execution in this cause was issued against him (Henry L. Coe) did not violate the 14th Amendment to the Constitution of the United States, and particularly that portion of said amendment which provides that no State shall pass any law which deprives any person of property without due process of law, nor shall any State pass a law which denies to any person the equal protection of the laws."

The only two sections of the laws of Florida which apply to the issuing of an execution against a stockholder in a corporation are chapter 5892, above referred to, being an amendment to section 2677 of the General Statutes of the State of Florida, passed in 1906, and section 2678 of the General Statutes of Florida, passed in 1906, which provides as follows:

> "The clerk or other officer having charge of the books, records and papers of any corporation, on demand of any officer holding execution against the same, shall furnish such officer with the name, place of residence and the amount of liability of any person liable as aforesaid, and, if such officer refuse so to do, he shall, upon complaint thereof, be liable to a fine not exceeding $500.00."

The transcript in this cause shows that a judgment having been recovered against the Vegetable Company by the Fertilizer Works the attorneys representing the Vegetable Company, without any notice to any one and without any proof that Henry L. Coe was a stockholder in the Vegetable Company, had the clerk of the court to issue an execution directing the sheriff that of the goods and chattels, lands and tenements of Henry L. Coe, as one of the stockholders of the Vegetable Company, you cause to be made an amount equal to the amount remaining unpaid upon the subscription of the said Henry L. Coe to the stock of said corporation to the extent of the judgment rendered against the Vegetable Company.

The court below, in the Circuit Court, upon the motion of Coe to quash this execution, quashed the same, upon the ground that some other steps were necessary before the execution could issue; meaning, of course, that there must be some proof before the court that Coe was a stockholder of the said defendant corporation and indebted to it for his stock. The Supreme Court of Florida held in both opinions referred to that the execution was legally issued without any proof to the court or anyone else that Coe was either a stockholder or indebted on his stock.

Our contention is that the statute as thus construed by the Supreme Court of Florida violates the two portions of the Fourteenth Amendment to the Constitution of the United States hereinbefore set out. That is to say, that under this statute, and all of its provisions, the defendant is denied the due process of law and the equal protection of the laws required by the Constitution of the United States.

We do not for a moment contend that the State has not the power to define the liability of a person taking stock in a corporation, and also to provide how it shall be collected from said stockholder, but what we do contend is that, before a man's goods can be seized under an execution against a corporation, the person whose property is seized must receive some notice, and there must be a judicial determination of the fact that such person is a stockholder.

In the case entitled *"In re* Rosser," 101 Federal Reporter, page 562, text page 567, this language is used:

> "The basic principle of English jurisprudence is that no man shall be deprived of life, liberty, or property without due process of law, without a course of legal proceedings according to those rules and forms which have been established for the protection of private rights. Such a course must be appropriate to the case and just to the party affected. It must give notice of the charge or claim against him and an opportunity to be heard respecting the justice of the order or judgment sought. * * * And the opportunity to be heard must be such that, if he chooses, he may cross-examine the witnesses produced to sustain the claim and produce witnesses to refute it, if a question of fact is in the issue, and if a question of law is presented, the opportunity to be heard must be such that his counsel may, if they desire, argue the justice and propriety of the judgment or order proposed. Judicial orders or judgments affecting the lives or property of citizens in the absence of such a notice and opportunity to the party affected are violative of the fundamental principles of our law and cannot be sustained."

See also

Louisville Trust Company *vs.* Leonard Comingor, 22d Supreme Court Reporter, p. 293.

Rouse Hazzard & Co. *vs.* Donovan, 62 Northwestern, p. 359.

Lauder *vs.* Tillia, 11 Atlantic, p. 86.

Lauder *vs.* Logan, 16 Atlantic, p. 44.

Wilson *vs.* Seligman, 36 Fed. Repr., p. 154.

Pennoyer *vs.* Neff, 95 U. S., 714.

It might be well here to notice the history of the legislation of the State of Florida on the subject under discussion. The first statute of Florida providing how the stockholder of a corporation may be required to pay the indebtedness of an insolvent corporation was passed in 1879, being section 9 of chapter 3165, hereinbefore set out in full. Under this statute where an execution against a corporation was returned "no goods found," the law required that, if any person desired to hold an individual as a stockholder in the corporation, a motion should be made in open court and due notice served upon each individual sought to be charged, and, under this statute, the Supreme Court of Florida held, in the case of Hood *vs.* French, 37 Fla., p. 117, that, upon the service of the motion above mentioned upon the stockholder, the stockholder had a right to come into court and contest the fact as to whether he was a stockholder and as to whether he owed anything upon his stock. This statute, of course, gave to the person sought to be charged due process of law.

The laws of Florida were revised in 1906, and this statute of 1879 was changed to read as follows. Section 2677 of the General Statutes of 1906:

> "If any execution shall issue against the property or effects of any corporation and there cannot be found whereon to levy, then such execution may issue against any of the stockholders to an extent equal in amount for so much as may remain unpaid upon the subscription and no further; and all property, whether real or personal, of any stockholder in any corporation aforesaid shall be exempt from the debts and liabilities of such corporation contracted in its corporate capacity except the stock of said stockholder of or in said corporation to the extent mentioned aforesaid."

Clearly, if the only thing subject to execution against the stockholder was his stock in the corporation, there was no necessity to serve any notice upon him, and this was a plain statement of the act. It is true, however, that the

Supreme Court of Florida, in the case of Knight & Wall Company *vs.* Tampa Sand-Lime-Brick Company, 55 Florida, 728, held that the act did not mean what it said, but that the execution could be issued generally against the property of the stockholder to the extent of his unpaid subscription. However, the case of Knight & Wall Company was a case wherein a bill in equity was brought against an insolvent corporation, and all the stockholders were made parties to the bill, and a decree was sought for the appointment of a receiver to levy an assessment upon the stockholders to the extent of their unpaid subscription, and the question raised here was not determined in that case.

It may be well for the court to notice the statutes of all other States in the Union in so far as we are able to collate them upon the subject under controversy here.

First. At common law, and we call the attention of the court to the fact that the common law of England, except as repealed by statute, is in force in this State (see section 59 of the General Statutes of Florida, of 1906, hereinbefore set out in full), where an execution was sought against a shareholder, a writ of *scire facias* was required to be issued to the stockholder, and upon this writ the question of whether he was a stockholder and the amount due was judicially determined before the execution issued against him.

See section 3591, Thompson on Corporations.

Under the Kansas law the statute was similar to the Florida law of 1879, requiring notice to be given to the stockholder before execution issued.

See section 3598, Thompson on Corporations.

The Missouri statute similarly required such notice to be served.

See section 3602, Thompson on Corporations.

The Massachusetts procedure is set out in section 3596 of Thompson on Corporations, and in that State, as well as in the State of Georgia, where it was sought to hold a stockholder, the statute required that the summons in the original suit against the corporation should be served upon the stockholder whose property it was sought to charge.

The court will notice from the very form of the execution issued in this case that the entire determination, the amount to be collected by the sheriff and the determination of whether or not he is a stockholder in the corporation is left to the sheriff to determine, and certainly no court would hold that this is due process of law.

The Fertilizer Works contended in the court below and before the Supreme Court of Florida that their position was sustained by the following cases:

Hampson *vs.* Weare, 4 Iowa, page 12.

A careful examination of this case will show that it does not sustain the contention of the Fertilizer Works. In the first place, in that case an injunction against the levy of execution against the stockholder was sustained by the Supreme Court. The decision is not well reasoned, and the court themselves admit it. However, in that State, the law provided at that time that, before any execution should issue against a stockholder, a notice should issue and be served upon the officers of the corporation to show cause why the property of the members should not be liable, which was at least some process of law, and the court argues that the officers or managers being chosen by the members and general stockholders themselves, that they thereby fairly represented all the stockholders. And the court in that case did hold that an exceution issued against a single stockholder was illegal, and used the following language:

> "The judgment recovered is against the corporation and not against the individuals. But such proceedings were had that in accordance with the statute as we may for the present assume, the court

> rendered judgment (or order) that an execution issue against the property of the members. But there is no judgment against the persons as members. There is no adjudication that certain persons were such. The execution, therefore, should follow the judgment and run against the corporation with a clause that it be levied on the property of the members. The clerk should not undertake to adjudicate on their membership by causing the execution to run against them personally, but should leave the officer to ascertain who are the members as he may. And thus leave the party also to his proper remedy, if he believe himself not liable, or to other proper course if he is liable."

The inconvenience and, practically, the unconstitutionality of this statute was determined by the legislature of Iowa because, between the rendition of this decision and a decision from the same court rendered in volume 5 of the Iowa Reports, Donworth & Behan *vs.* Coolbaugh *et al.,* 5 Iowa, p. 300, the act was changed so as to require a personal service upon the stockholder, or person sought to be held as such, and an adjudication of this fact before the execution was issued.

They also cited to this court as sustaining their contention, the case of Bank of Columbia *vs.* O'Kely, 4th Wheaton, p. 236.

This case, if carefully analyzed, does not sustain the contention of the Fertilizer Works. And again, the court will understand that this decision was made prior to the passage of the Fourteenth Amendment to the Constitution of the United States, and, therefore, the question here involved was not there involved. The act, however, there under consideration, which incorporated the Bank of Columbia, gave to the bank summary process by execution and in the nature of an attachment against its debtors who had, by an express consent in writing, made bonds, bills, or notes by them drawn or endorsed, negotiable at the bank. And the act further provided that, before the execution should issue, the presi-

dent of the bank should make an oath of the amount due which he had filed with the clerk; and further provided that, if the defendant shall dispute the whole or any part of said debt, and on a return of the execution, the court before whom it is returned shall and may order an issue to be joined and a trial to be had. Clearly, this act did give to the defendant the opportunity to be heard in court, even if it had been passed after the passage of the Fourteenth Amendment to the Constitution of the United States.

Counsel below also contended that the case of Bernheimer *vs.* Converse, 27th Supreme Court Reporter, p. 755, sustains their contention. This case, if carefully read, on the contrary, sustains the contention of Coe. The statute under consideration there was the act of Minnesota providing for the collection of unpaid subscription by stockholders. The act provided, in substance, that, upon a corporation becoming insolvent, a petition should be filed setting out the indebtedness of the corporation and that it had no property, the names of the stockholders and the amounts due by them for stock, and that a hearing should be had before the court, the indebtedness of the corporation determined, and the liability of the stockholders, and the receiver should proceed to collect the amount assessed against the stockholders by suit. And the Supreme Court of Minnesota, in construing this act, in the case of Straw & E. M. F. G. Co. *vs.* L. D. Kilbourne Boot & Shoe Co., 80 Minn., 125, say:

> "It did not have the effect to deprive a person when sued for the amount assessed on shares of stock under the provision of the act from showing that he was not a stockholder or that he was not the holder of so large an amount of stock as was alleged or that he had a claim against the corporation which, in law or equity, he might be enabled to set off as against the claim for assessments or from making any other defense personal to himself."

Clearly the Minnesota act did grant to a person due process of law.

The Supreme Court of Florida, in the first opinion rendered in this cause (see page 24 of the Record), did not decide that a motion to quash the execution was not a proper remedy, and, by hearing the case upon its merits, they determined that it was a proper procedure to attack the constitutionality of the act. The court, however, seemed to hold that, by reason of section 2678 of the General Statutes of Florida, 1906, hereinbefore cited, there was ample protection given a person sought to be charged as a stockholder, for the reason that said section provided that officers of a corporation should disclose to the sheriff the names of the stockholders and the amounts due by them under penalty of a fine of five hundred dollars for not doing so. Clearly, this is no protection or process of law. The fine, if any, is not given to the person whose property is seized, and the amount thereof might never be adequate to protect the person against whom the execution is issued. The court in said opinion further seems to think that sections 1624 and 1625 of the General Statutes of Florida, passed in 1906, provided due process of law. It would be well to say that a person could be put in jail at the request of a citizen and that, because he could be liberated by writ of *habeas corpus,* that he was given due process of law. Again we call the court's attention to the fact that the common law of England is in force in this State except where repealed by statute, and, under the common law of England, the motion to quash an execution was always used, and there has been no statute of this State repealing this common-law right, and therefore it is still in force.

See Freeman on Execution, second edition, section 73.

The Supreme Court, in the second opinion rendered in this cause (see page 18 of the Record), evidently doubted the former opinion as to the constitutionality of this statute, because they used the following language:

> "The statute presents many difficulties that may arise as to others not similarly situated and may, as

such, be beyond the power of the legislature; but the party now before this court has not brought himself within the class who may justly complain."

We must confess that we are not able to understand this statement of the court, because the statute is either constitutional or it is unconstitutional, and we contend that, under the Constitution of the United States, the provisions of this statute do deny to the plaintiff in error due process of law.

All of which is respectfully submitted.

W. A. CARTER,
Attorney for Plaintiff in Error.

(26920)

[redacted]

[redacted]

[redacted]

INDEX TO BRIEF.

	Pages.
Statement of Case	1—2
Argument that the first decision of the Supreme Court of Florida has become the law of this case and cannot be changed by this writ of error from the second decision of said Supreme Court	3—4
Authorities cited in support of above proposition:	
Valdosta Mercantile Co. vs. White. 56 Fla. 704	3
Anderson vs. Northrop. 44 Fla. 472	3
McKinnon vs. Johnson. 57 Fla. 120	3
Knight vs. State. 44 Fla. 94	3
Clark vs. Keith. 106 U. S. 464. 27 Law Ed. 106	3
The Board of Supervisors, etc. vs. Kennicott, 94 U. S. 499. 24 Law Ed. 260	3
Browder vs. McArthur. 7 Wheat. 55. 5 Law Ed. 397	3
Ogden vs. Saunders. 12 Wheat. 332. 6 Law Ed. 606	3
Bell vs. Niles. 61 Fla. 114	4
Hoopes vs. Crane. 56 Fla. 395	4
Dunellon Phosphate Co. vs. Crystal River, etc. Co. (Fla.). 58 Sou. 787	4
Argument that Statute does not contravene Fourteenth Amendment to Federal Constitution	4
Statutes of Florida quoted	5
Authorities cited as to constitutionality of Florida Statute :	
10 Cyc. page 670, and cases cited in note 47	8
Eames vs. Savage. 77 Me. 212. 52 Amer. Rep. 751	8
Stanley vs. Stanley. 26 Me. 191	8
Vial vs. Penniman. 103 U. S. 714. 26 Law Ed. 602	9
Bernheimer vs. Converse. 206 U. S. 514	8
Hampson vs. Weare. 4 Iowa 13. 66 Amer. Dec. 116	8
Armour Fertilizer Works vs. Parrish Vegetable & Fruit Co. 63 Fla. 64	8
Bank vs. Okely. 4 Wheat. 233. 4 Law Ed. 559	6
Cooley's Constitutional Limitations, 7 Ed. page 506	5
Dutton Phosphate Co. vs. Priest. (Fla.) 65 Sou. 282	4
Rafael Maria del Castillo vs. McConnico. 168 U. S. 674. 42 Law Ed. 622	4
Blanchard vs. Burrus. 20 Fla. 467	7
L. & N. Ry. vs. Schmidt. 177 U. S. 230	6
State ex rel. Canfield. 40 Fla. 36	6
Barnett vs. Hickson. (Fla.) 41 Sou. 606	7
Ex Parte Scudamore. 55 Fla. 211. 46 Sou. 279	8
Cases relied upon by plaintiff in error cited and distinguished:	
Wilson vs. Seligman. 36 Fed. Rep. 154	9
Pennoyer vs. Neff. 95 U. S. 714	10
Rouse vs. Donovan. 62 N. W. 359	11
Lauder vs. Tillia. 11 Atl: 86	11

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1914

No. 140

HENRY L. COE, Plaintiff in Error,

vs.

ARMOUR FERTILIZER WORKS, Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

Statement.

The defendant in error recovered judgment in the Circuit Court for Manatee County, Florida, against the Parrish Vegetable & Fruit Company, a Corporation. Execution was issued and returned nulla bona. Thereupon an execution was issued under Chapter 5892, Acts of 1909, Laws of Florida, against the plaintiff in error as a stockholder of said corporation for an equal amount to the amount remaining unpaid upon his subscription to the stock of said company. The plaintiff in error filed a petition in the court in which the judgment was recovered, setting up the judgment, the issue and return of the execution against the corporation, and the issue of the execution against the plaintiff in error, and moved the court under Section 1625 of the General Statutes of Florida to quash the execution upon the following grounds:

First: Because the issuance of said execution amounts to the taking of the property of your petitioner without due process of law.

Second: Because the statute of Florida under which said execution is issued violates the Constitution of Florida in this, to-wit: (a) Because it denies to your petitioner due process of law. (b) Because it denies to your petitioner equal protection of the law.

An order of the Court was made granting this motion in the following words:

"The execution is quashed, but not on the ground of unconstitutionality of the statute. The statute is constitutional, but the execution cannot issue until some preliminary steps are taken."

From this order the Armour Fertilizer Works appealed to the Supreme Court of Florida, which Court on the 26th day of March, A. D. 1912, handed down an opinion reversing the order of the Circuit Judge, a copy of the opinion being found on pages 24-25 of the printed transcript in this court. After the mandate had been sent down the plaintiff in error called up the same motion for further hearing before the Circuit Judge, and the Circuit Judge in obedience to the mandate of the Supreme Court, overruled the motion, from which order the plaintiff in error appealed to the Supreme Court of Florida, which affirmed the judgment of the lower court, the opinion being found on page 18 of the printed transcript. From this last judgment of the Supreme Court of Florida, dated March 17, A. D. 1913, the plaintiff in error brings the cause to this Court for review, relying upon one assignment of error, namely, that Chapter 5892. Acts of 1909 of the State of Florida, violates the Fourteenth Amendment to the Constitution of the United States, and particularly that part of said amendment which provides that no state shall deprive any person of property without due process of law, nor shall any state pass any law which denies any person equal protection of the laws.

Argument.

First: This writ of error should have been taken from the judgment of the Supreme Court of Florida rendered on March 26, 1912, as the opinion of the court then handed down decided the question involved; and having failed to take a writ of error from said judgment, the same has become the law of this case, and cannot be reviewed by this Court upon a writ of error from the judgment of the Supreme Court of Florida rendered in the second appeal to that court, in which the opinion was handed down on the 28th day of January, 1913. "All the points adjudicated by an appellate court upon a writ of error or an appeal become the law of the case and are no longer open for discussion or consideration."

Valdosta Mercantile Co. vs. White. 56 Fla. 704.
Anderson vs. Northrop. 44 Fla. 472.
McKinnon vs. Johnson. 57 Fla. 120.
Knight vs. State. 44 Fla. 94.

"Whatever has been decided in this court on one writ of error cannot be re-examined here on a subsequent writ brought in the same suit."

Clark vs. Keith. 106 U. S. 464. 27 Law Ed. 106.
The Board of Supervisors, etc., vs. Kennicott. 94 U. S. 499. 24 Law Ed. 260.
Browder vs. McArthur. 7 Wheat. 55. 5 Law Ed. 397.

"And the positive authority of a decision is co-extensive with the facts."

Ogden vs. Sanders. 12 Wheat. 332. 6 Law Ed. 606.

The first opinion of the Supreme Court of Florida clearly settled the constitutional question relied upon against the plaintiff in error, and on the second appeal the case was expressly affirmed "upon the authority of our former holding." Had the court not held the statute to be constitutional it could not and would not

have reversed the order of the Circuit Judge quashing the execution, because the law is well settled that "a correct ruling of the trial court will not be disturbed because of erroneous or wrong reasons which may have been given therefor, as it is with the ruling itself and not with the reasons therefor with which an appellate court is concerned."

Bell vs. Niles. 61 Fla. 114.
Hoopes vs. Crane. 56 Fla. 395.
Dunellon Phosphate Co. vs. Crystal River, etc. Co. (Fla.). 58 Sou. 787, and cases cited on page 787.

This Court should therefore adjudge the plaintiff in error to be concluded by the opinion and judgment of the Supreme Court of Florida rendered on March 26, 1912, from which no writ of error has been taken to this Court, and the principles there enunciated have therefore become the law of this case.

Second: The statute under which the execution was issued against the plaintiff in error does not contravene the Fourteenth Amendment to the Federal Constitution, because it is in line with procedure which has obtained in various states of the Union for all time, and has afforded, and is now affording the plaintiff in error his day in court. The courts have never undertaken to give a general definition of due process of law of universal application, but each case stands upon its own facts, and the question is whether the statute assailed has in the particular case afforded such adjudication to the complaining party as comports with settled maxims of the law; not whether under some other set of facts the statute might operate unconstitutionally. In other words, "the application of a statute in a particular case may violate organic law, but the statute as framed may not be unconstitutional when properly applied," and the question in each case is whether the statute has been so operated as to violate the constitutional rights of the complaining party.

Dutton Phosphate Co. vs. Priest (Fla.). 65 Sou. 282.
Rafael Maria del Castillo vs. McConnico. 168 U. S. 674. 42 Law Ed. 622.

"Due process of law in each particular case means such an exertion of the powers of government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs."

Cooley's Constitutional Limitations, 7 Ed. page 506, and authorities cited in note 2.

The question then is whether the Statutes of Florida in the case at bar have so far departed from the settled maxims of the law as to deny to the plaintiff in error the safeguards necessary for the protection of his rights. The statutes involved are as follows:

Section 2677, Gen. Statutes of Florida, as amended by Chapter 5892, Acts of 1909. "If any execution shall issue against the property or effects of any corporation, and there cannot be found whereon to levy, then such execution may be issued against any of the stockholders to an extent equal in amount for so much as may remain unpaid upon their subscriptions to the capital stock and no further."

Section 2678, of the Gen. Statutes of Florida: "The clerk or other officer having charge of the books, records, and papers of any corporation, on demand of any officer holding execution against the same, shall furnish such officer with the name, places of residence, and the amount of liability of every person liable as aforesaid, and if such officer refuses so to do he shall, upon complaint thereof, be liable to a fine not exceeding $500.

Section 1625, Gen. Statutes of Florida: "The Court before which an execution is returnable may on motion and notice to the adverse party for a good cause, upon such terms as the court may impose, direct a stay of the same and the suspension of the proceeding thereon."

Section 2677 of the General Statutes above quoted became the law of Florida in 1892, being Section 2152, Revised Statutes of Florida, and before its amendment in 1909 was construed by the Supreme Court of Florida in Knight & Wall Company vs. Tampa Sand Lime Brick Company, 55 Fla. 728; and the amendment

eliminates the latter clause of the original section, which the court had virtually held to be meaningless.

The statute in question does not prescribe or change the liability of the stockholder, but simply provides a summary method of enforcing that liability. It does not alter the right, but affects the remedy, as to which a very great latitude is allowed.

L. & N. Ry. vs. Schmidt. 177 U. S. 230.
State ex rel Canfield. 40 Fla. 36.

Corporations are creatures of statute, and share holders are allowed the benefits of the corporation laws and must assume the liabilities thereof. The law enters into and forms a part of every contract, and "a stockholder of a corporation becomes as such charged with knowledge that under the statutes upon return of nulla bona upon an execution issued against the corporation an execution may be issued against him for the unpaid subscription to the stock he holds."

Armour Fertilizer Works vs. Coe. 63 Fla. 64.
Blanchard vs. Burrus. 20 Fla. 467.

Until the stock is paid for, therefore, he, by the act of subscribing for stock, solemnly assents to the enforcement of the law as it then obtains, and thereby becomes a quasi party to any suit against the corporation. To deny him this right would be to abridge his personal liberty.

Bank vs. Okely. 4 Wheat. 233. 4 Law Ed. 559.

A stockholder is not necessarily deprived of his property without due process of law by such proceedings as determine the liability of a stockholder without notice being first served on him.

Bernheimer vs. Converse. 206 U. S. 514. 51 Law Ed. 1163.

In this case this court speaking through Mr. Justice Day, among other things said:

"By becoming a member of a Minnesota Corporation and assuming the liability attaching to such membership, he became subject to such regulations as the State might lawfully make to render the liability effectual."

Similar summary procedure is provided by the laws of Florida and other states against the sureties upon forthcoming bonds in replevin and in attachment, the levy upon personal property for unpaid taxes, the entry of judgment against the sureties of a third person claiming property levied on under execution upon his claim bond, etc., in all of which cases judgment may be entered against the sureties without notice. Likewise in many states the practice of foreclosing mortgages by advertising the property for sale and without any other notice or proceeding has prevailed and been upheld by the courts. Also the Statutes of Florida and of many other states provide summary methods for the enforcement of a landlord's lien for rent, and the Supreme Court of Florida has upheld this procedure upon the ground, among other things, that "the contract of leasing is made under these conditions imposed by the statutes, and of course the statute enters into and forms a part of the contract regulating and limiting the rights and duties of each party."

Blanchard vs. Burrus. 20 Fla. 467.

But the plaintiff in error is also sufficiently protected by the Statutes of Florida providing for the stay of execution upon motion, etc.

Section 1625 of the Gen. Statutes above quoted, also Section 1624.

In construing these statutes the Supreme Court of Florida has repeatedly held that the Circuit Court before which an execution is returnable has the entire control thereof, that it may stay the same temporarily or permanently, or quash it altogether, according to the circumstances.

Barnett vs. Hickson. (Fla.) 41 Sou. 606.

If the plaintiff in error was not a stockholder he could have set that fact up in his motion to quash the execution, and the court upon the trial of that question could under the statute have made such an order as justice required; and if any issue of fact required trial by jury, the court had ample power to empanel a jury for that purpose. And when the plaintiff in error came into court and invoked the action of the court and obtained the order from which writ of error was taken to the Supreme Court of Florida and thence to this Court, he was then having his rights tried, and is now having his rights tried by due process of law.

Ex parte Scudamore. 55 Fla. 211. 46 Sou. 279.
Armour Fertilizer Works vs. Parrish Vegetable & Fruit Co., et al. 63 Fla. 64.

But more directly in point are numerous authorities holding that statutes providing a summary method for the enforcement of a stockholder's liability by permitting an execution on a judgment against a corporation to be levied upon the goods of the stockholder are not unconstitutional.

10 Cyc. page 670, and cases cited in note 47.
Stanley vs. Stanley. 26 Me. 191.
Hampson vs. Weare. 4 Iowa 13. 66 Amer. Dec. 116.
Bernheimer vs. Converse. 206 U. S. 514.
Eames vs. Savage. 77 Me. 212. 52 Amer. Rep. 751, and authorities cited at the top of page 755 of said 52 Amer. Rep.

In the last cited case the court on page 755 uses the following analogy:

"The principal is analogous to that which permits a creditor holding an execution against A at his peril to levy directly upon certain goods as the goods of A without first instituting any process to determine their ownership. If B's goods be taken, he has a remedy against the officer or can successfully resist him. A is not injured in either event. If the person whose goods are sought to be taken on execution against the corporation is liable

as a stockholder for the debt he is not injured thereby. If he is not liable he has the same rights and remedies as B."

This is a very strong case and very ably and conclusively disposes of the question at issue, and among the other authorities discussed is the case of Vial vs. Penniman, 103 U. S. 714, 26 Law Ed. 602, in which the statute involved made the stockholder of a manufacturing company liable under certain conditions for all of the debts of the company, and provided that in such cases "their persons and property may be taken therefor on any writ of judgment or execution against the company for such debt in the same manner as a writ of execution issued against them for their individual debts." The constitutionality of this statute was directly affirmd by the Supreme Court of the State of Rhode Island and was assumed without question by the United States Supreme Court.

It is of course unnecessary to cite authorities to show that this statute does not violate that part of the Fourteenth Amendment guaranteeing the equal protection of the law. This prohibits legislative bodies from passing class legislation; or, in other words, discriminating unjustly between individuals under similar circumstances. It is clear that this statute does not deny to Mr. Coe the same protection of the law that is afforded every other stockholder in any corporation under the Laws of Florida.

Counsel for plaintiff in error does not cite a single case in point in support of his contention. His whole argument consists of contentions and conclusions drawn from authorities which have discussed the Fourteenth Amendment to the Federal Constitution under facts and circumstances wholly different from the case at bar. The authorities so cited, to which we have access, may, in our opinion, be used with more weight in support of the statute involved in this case than against it.

In the case of Wilson vs. Seligman, 36 Fed. Rep. page 154, the only question decided is that under the Missouri Statute requiring notice of an application for an execution against a stockholder on a judgment against a corporation no jurisdiction of the person of the stockholder was acquired by service of such notice

beyond the bounds of the State of Missouri. In other words, the Court held that inasmuch as the statute required notice to be served on the stockholder, such service must be made, and that the service to be binding must be within the domain of the State of Missouri.

There is nothing in this case to sustain the contention of counsel. On the other hand, this same case went to the Supreme Court of the United States and is reported in 144 U. S. 41. 36 Law Ed. 338. And on page 340, the Court, speaking through Mr. Justice Gray, uses the following language:

"Under a former statute of Missouri, any officer holding an execution against a corporation which had been returned unsatisfied might, without further action of the court, levy the same execution upon the property of stockholders within the State. Missouri Rev. Stat. 1855, chap. 34, Sec. 13, 14. In that condition of the law, the judgment and execution bound only the property of the stockholders on which it was levied within the State, and created no personal liability on their part which could be enforced by suit in another State; and if the officer levied the execution on the property of any person not a stockholder, he was liable as a tresspasser. The very object of the existing statute, as manifest was to change the law so as to leave nothing to the discretion of the officer, and to require the judgment creditor to apply to the court for execution against any person whom he sought to charge as a stockholder, and to have all questions affecting his relations to the corporation and its creditors investigated and determined by the court before an execution should issue against him."

Thus showing that under a former statute of Missouri it had been the practice to levy an execution against a corporation directly upon the property of the stockholders, and the courts had sustained such procedure.

The change in the Missouri Statutes is also discussed in Merchants Insurance Company vs. Hill. 86 Mo. 466.

The case of Penoyer vs. Neff, 95 U. S., 714, has no application whatever to the facts of this case, but the principal point decided there was that in order to recover a personal judgment against an individual, personal service must be obtained within the juris-

diction of the court, but that a proceeding in rem could be lawfully conducted against the property of an owner resident without the jurisdiction of the court and the property could be bound.

In the case of Rouse vs. Donovan, 62 N. W. 359, the Supreme Court of Michigan in construing Section 2366 of Howell's Statutes prescribing the method of enforcing the unpaid subscription of stockholders in a case where a motion had been made in open court and notice served on the stockholders before the execution had been issued, held that the statute was constitutional, and that the provision in the statute "that no such execution shall issue against any member except upon an order of court or of a judge of the court **** and the said court or judge may compel the production of books of the association showing the names of the members thereof and the amount of the capital stock remaining to be paid," etc., contemplated a motion and notice to the stockholders And the statute having been copied from Pennsylvania the construction of the Pennsylvania Statutes by the Supreme Court of that state in Lauder vs. Tillia, 117 Pa. State, 304, was adopted.

Among other things the opinion says:

"By their own voluntary act in organizing they have read the statute into their articles of association, and have solemnly agreed with their creditors that execution may issue against their unpaid subscriptions."

Again, "In the present case the members of the association through the suit against it have had their day in court to test the relator's claim, and judgment has been duly entered. The relator is entitled to a levy upon all the assets of the association, and to a sale thereof in satisfaction of its judgment. The subscriptions of the members are a part of such assets, which they are legally and morally bound to contribute. The statute and their own solemn agreement have provided a simple method by which such assets can be reached. The proceedings taken by the relator were such as are contemplated by the statute and constitute due process of law."

At the time of preparing this brief we have not access to the case In re, Rosser, 110 Fed. Rep. 562, from which counsel for

plaintiff in error quotes at length. But from a digest of the case we note that it was a case of imprisonment for violating the order of a court of bankruptcy requiring the payment of money and delivery of property which Rosser had in his possession to the Trustee in bankruptcy, and the court held that the restraint of the defendant did not constitute imprisonment for debt. An abstract quotation from the opinion in this case is of little value in the case at bar. Likewise the references to Thompson on Corporations, while instructive upon the general question and the policy of the various states, are not material upon the point at issue.

Counsel for plaintiff in error is in error in referring to the statute in question as having been first adopted in Florida in 1906 when the General Statutes were compiled. On the other hand, this statute became a part of the law of Florida upon the adoption of the Revised Statutes of Florida in 1892. Section 2677 of the General Statutes of 1906 is an exact copy of Section 2152 of ally enacted by the Legislature in 1879 required notice to be served on the stockholder before issuing the execution, but the provision requiring notice was eliminated in 1892, and has been the law of this state continuously since that date. The statute has been construed by the Supreme Court of Florida, both before and since the change was made.

Hood vs. French. 37 Fla. 117.
Knight & Wall Co. vs. Tampa Sand Lime Brick Co., 55 Fla. 728.

The attorney for plaintiff in error expresses surprise and confusion because of the following language used by Mr. Justice Cockrell of the Supreme Court of Florida, in his opinion in this cause, to-wit:

"The statute presents many difficulties that may arise as to others not similarly situated, and may as such be beyond the power of the Legislature, but the party now before this court has not brought himself within the class who may justly complain."

The opinion of the court on page 18 of the transcript is apparently not correctly transcribed, in that the court is made to say on the first line of the second paragraph of the opinion that "Coe does not claim that he was in fact a stockholder." Undoubtedly what the court actually said is that Coe does not claim that he was not in fact a stockholder. The entire opinion makes it perfectly plain that the court is treating Mr. Coe as a stockholder, because he has not denied that he is a stockholder, and therefore the court concludes that while the statute may present difficulties as to persons differently situated; that is as to persons not stockholders whose property might be levied upon; that as to one situated like Mr. Coe, that is who is in fact a stockholder and who owes a balance on his subscription, the statute is undoubtedly constitutional and does not operate in the particular case when applied against the stockholder to deprive him of property without due process of law.

To recapitulate, we insist that the judgment appealed from in this case should be affirmed;

First: Because the law of this case is settled adversely to the plaintiff in error by the opinion of the Supreme Court of Florida handed down on March 26, 1912, from which no appeal has been taken, and which has become the law of this case.

Second: Because the summary proceeding to enforce the stockholder's liability provided for by statute is in accord with settled maxims of law, and has for many years been permitted and sanctioned by the statutes of various states, including Florida, and relates only to the remedy and violates no right.

Third By becoming a stockholder in a corporation the subscriber thereby assents to the provisions of the law, and by the act of subscribing solemnly contracts with the creditors of the corporation that their claims may be enforced by the method prescribed by statute.

Fourth: The stockholders in view of the statute is a quasi party to the suit against the corporation, and all questions of fact not determined by the judgment against the corporation and the return nulla bona of execution issued thereon, can be determined by the court under the statutes of Florida upon motion to stay the execution.

Respectfully submitted,

O. K. REAVES,
Attorney for Defendant in Error.

COE *v.* ARMOUR FERTILIZER WORKS.

ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

No. 140. Submitted January 20, 1915.—Decided May 3, 1915.

Where the case was tried twice below and twice went to the highest court of the State and the Federal question was decided adversely to plaintiff in error on the first appeal, he is not concluded thereby because he failed to then take a writ of error if it appears that the first judgment of the higher court did not finally dispose of the case but required further proceedings in the court below.

Not until the judgment of the court of last resort is final will a writ of error lie to this court under § 237 Judicial Code.

The contention that under the local practice on a second writ of error to the Supreme Court of the State a Federal question that was passed on at the first hearing is not open, cannot be sustained in this court if as a matter of fact the state court did pass on the question on the second hearing and decide it adversely to plaintiff in error.

Any course of procedure having for its object the taking of property to satisfy an alleged legal obligation without according any hearing to a respectful protest invoking the supreme law of the land cannot be regarded as due process of law.

Section 2677, General Statutes of Florida of 1906 as amended in 1909, as construed by the highest court of the State, is repugnant to the due process provision of the Fourteenth Amendment in so far as it allows, after execution has been returned "no property" against a corporation, an execution to issue against a stockholder for the same debt to be enforced against his property to the extent of his unpaid subscription as the same appears on the books of the corporation without notice to such stockholder or other preliminary step.

While a judgment against a corporation without fraud or collusion in a court having jurisdiction may be made conclusive upon the stockholder, as to existence and amount of the debt, the property of a third party may not be taken to satisfy that debt upon the ground that he is a stockholder and indebted to the corporation without granting him an opportunity to be heard.

One protesting against his property being taken without due process of law cannot be denied such process on the ground that due process would lead to the same result as he had no defense on the merits.

Extra-official or casual notice, or a hearing granted as matter of favor or discretion, does not take the place of the notice with right and opportunity to be heard which the due process provision of the Federal Constitution requires.

In this case the execution was not a mere attachment establishing a lien without going further until after opportunity to be heard.

Where defendant comes into court for the sole purpose of objecting on jurisdictional grounds to the execution of final process against his property his petition cannot, under the due process provision of the Fourteenth Amendment, be converted into a tender of an issue of fact respecting his status as a stockholder so as to conclude him on a matter not within the pleadings and which was not litigated.

63 Florida, 64, reversed.

THE facts, which involve the constitutionality of § 2677, General Statutes of Florida of 1906, as amended by the act of 1909, c. 5892, relating to the liability of stockholders for judgment debts of the corporation to the extent of their subscriptions remaining unpaid, are stated in the opinion.

Mr. W. A. Carter for plaintiff in error:

The statute is unconstitutional, as violating the Fourteenth Amendment. *In re Rosser*, 101 Fed. Rep. 562, 567; *Louisville Trust Co.* v. *Cominger*, 184 U. S. 18; *Rouse* v. *Donovan*, 62 N. W. Rep. 359; *Lauder* v. *Tillia*, 11 Atl. Rep. 86; *Lauder* v. *Logan*, 16 Atl. Rep. 44; *Wilson* v. *Seligman*, 36 Fed. Rep. 154; *Pennoyer* v. *Neff*, 95 U. S. 714.

Notice to stockholder is necessary to charge him for corporate debts. Thompson on Corps., §§ 3596, 3598, 3591, 3602.

Hampson v. *Weare*, 4 Iowa, 12; *Donworth* v. *Coolbaugh*, 5 Iowa, 300; *Bank of Columbia* v. *Okely*, 4 Wheat. 326; *Bernheimer* v. *Converse*, 206 U. S. 5–16; *Straw Co.* v. *Kilbourne Boot Co.*, 80 Minnesota, 125, relied upon by defendant in error can be distinguished.

Mr. O. K. Reaves for defendant in error:

The first decision of the Supreme Court of Florida has become the law of this case and cannot be changed by this writ of error from the second decision of said Supreme Court. *Valdosta Mercantile Co.* v. *White*, 56 Florida, 704; *Anderson* v. *Northrop*, 44 Florida, 472; *McKinnon* v. *Johnson*, 57 Florida, 120; *Knight* v. *State*, 44 Florida, 94; *Clark* v. *Keith*, 106 U. S. 464; *Supervisors* v. *Kennicott*, 94 U. S. 499; *Browder* v. *McArthur*, 7 Wheat. 55; *Ogden* v. *Saunders*, 12 Wheat. 332; *Bell* v. *Niles*, 61 Florida, 114; *Hoopes* v. *Crane*, 56 Florida, 395; *Dunellon Phosphate Co.* v. *Crystal River Co.* (Fla.), 58 So. Rep. 787.

The statute does not contravene the Fourteenth Amendment. 10 Cyc., p. 670, note 47; *Eames* v. *Savage*, 77 Maine, 212; *Stanley* v. *Stanley*, 26 Maine, 191; *Vial* v. *Penniman*, 103 U. S. 714; *Bernheimer* v. *Converse*, 206 U. S. 516; *Hampson* v. *Weare*, 4 Iowa, 13; *Armour Fertilizer Works* v. *Parrish Vegetable Co.*, 63 Florida, 64; *Bank* v. *Okely*, 4 Wheat. 233; Cooley's Const. Lim., 7th ed., 506; *Dutton Phosphate Co.* v. *Priest* (Fla.), 65 So. Rep. 282;

Castillo v. *McConnico*, 168 U. S. 674; *Blanchard* v. *Burrus*, 20 Florida, 467; *Louis. & Nash. R. R.* v. *Schmidt*, 177 U. S. 230; *State ex rel. Canfield*, 40 Florida, 36; *Barnett* v. *Hickson* (Fla.), 41 So. Rep. 606; *Ex parte Scudamore*, 55 Florida, 211.

Wilson v. *Seligman*, 36 Fed. Rep. 154; *Pennoyer* v. *Neff*, 95 U. S. 714; *Rouse* v. *Donovan*, 62 N. W. Rep. 359; *Lauder* v. *Tillia*, 11 Atl. Rep. 86, relied upon by plaintiff in error distinguished.

Mr. Justice Pitney delivered the opinion of the court.

The Armour Fertilizer Works, having recovered in the Circuit Court for Manatee County, Florida, a judgment for about $3,000 against the Parrish Vegetable & Fruit Company, a corporation, sued out a writ of execution against the goods and lands of that company and placed it in the hands of the sheriff, who returned that he was unable to find any property of the judgment debtor whereon to levy. Thereupon, pursuant to § 2677, Gen. Stat. Fla. 1906, as amended by act of 1909, c. 5892, the Fertilizer Works sued out an execution against the goods and lands of the plaintiff in error, Henry L. Coe, as a stockholder of the Vegetable Company. This writ set forth the recovery of the judgment by the Fertilizer Works against the Company, mentioning the date, the amount, and the court in which it was recovered, the issuing of execution against that company and the return thereon, and commanded that there be made of the property of Coe, as one of the stockholders of the Company, "an amount equal to the amount remaining unpaid upon the subscription of the said Henry L. Coe to the stock of said corporation." A formal levy was made upon a parcel of land, the property of Coe, but there was no interference with his possession, nor had any step been taken towards selling the land, when Coe filed in the Circuit Court a petition to quash the execution as issued

illegally, alleging that it had been issued without notice to him and amounted to the taking of his property without due process of law, and that the statute permitting it was void under the constitution of Florida, and was also repugnant to the "due process" and "equal protection" clauses of the Fourteenth Amendment. The Circuit Court entered judgment in the following words: "The execution is quashed, but not on the ground of unconstitutionality of the statute. The statute is constitutional, but the execution cannot issue till some preliminary steps are taken." The Fertilizer Works removed the cause by writ of error to the Supreme Court of Florida, and that court reversed the judgment (63 Florida, 64), holding that the statute required no preliminary step to be taken before an execution might be issued against a stockholder, and that there was no general law or rule requiring previous notice to him. The court further said:

"A stockholder of a corporation becomes such charged with knowledge that under the statute upon the return of *nulla bona* upon an execution issued against the corporation an execution may be issued against him for the unpaid subscription to the stock he holds. . . . . The statute above quoted [sec. 2678, Gen. Stat. 1906, set forth below] affords the means by which the officer holding the execution may obtain definite information as to the stockholders and the unpaid subscriptions on the stock. If the person against whom the execution is issued is not in fact a holder of stock upon which there is unpaid subscription, or if the amount of the execution is in excess of the unpaid subscription, the stockholder may have appropriate relief under the statute providing for the testing of the legality of executions. See Sections 1624 and 1625, Gen. Stats. of 1906."

The case went back to the Circuit Court with a mandate "that such further proceedings be had in said cause as according to right, justice, the judgment of said Supreme

Court, and the laws of the State of Florida, ought to be had." It was again brought on for hearing before the Circuit Court, when, without further pleadings or evidence on either side, judgment was rendered denying the motion to quash. Upon Coe's writ of error, the Supreme Court affirmed this judgment, for reasons expressed as follows:

"Coe does not claim that he was [not] in fact a stockholder, nor that there remains no balance due upon his stock, nor seek to interpose any of the defenses pointed out as open to him upon the former hearing, but stands boldly on his attack upon the constitutionality of the act, and by a proceeding unknown to our practice. There does not appear to have been any forcible seizure of any property of the said Coe, other than the formal levy upon realty, which does not interfere with the owner's possession. The statute presents many difficulties, that may arise as to others not similarly situated, and may as such be beyond the power of the legislature; but the party now before this court has not brought himself within the class who may justly complain, and the judgment as to him, upon the authority of our former holding, is, therefore, affirmed."

The present writ of error was then sued out.

Defendant in error moves to dismiss, upon the ground that, according to the local practice, the opinion delivered by the Supreme Court upon the first writ of error decided the question involved and became the law of the case, so that plaintiff in error, having failed to take a writ of error upon that judgment, was thereafter concluded by it. But, as appears from what has been stated, the first decision did not conclude the litigation; it called for further proceedings in the Circuit Court, and not until the judgment rendered by that court on the going down of the mandate had been affirmed upon the second writ of error did there exist a final judgment in the court of last resort of the state, such as might be brought under

the review of this court by virtue of § 237, Jud. Code, act of March 3, 1911, § 237, c. 231, 36 Stat. 1087, 1156. Besides, the contention that, by the local practice, the Federal question was not open for discussion or consideration upon the second writ of error is conclusively disposed of by the fact that the Supreme Court did, on that occasion, again consider it, with the result that the state law and the authority exercised under it were upheld as valid and not repugnant to the Constitution of the United States, and the immunity especially set up and claimed by plaintiff in error under that Constitution was overruled. *Nor. Car. R. R.* v. *Zachary*, 232 U. S. 248, 257, and cases cited. The statement in the second opinion, that the attack of plaintiff in error upon the constitutionality of the act was "by a proceeding unknown to our practice," does not, we take it, mean that the court did not necessarily pass upon the constitutional question. We are not sure we clearly comprehend the meaning of the expression quoted, in view of the effect attributed to §§ 1624 and 1625 in this case and in earlier decisions cited below. It would seem plain that any course of procedure having for its object the taking of property to satisfy an alleged legal obligation, and which yet accorded no hearing to a respectful protest invoking on reasonable grounds a prohibition found in the supreme law of the land, could itself hardly be termed "due process of law." The constitutional guaranty is not to be thus evaded, and we cannot believe there was any purpose to evade it in this case. Upon the whole, the right of review in this court is clear, and the motion to dismiss the writ of error must be denied.

The Florida statutes upon which the controversy turns are set forth in the margin.[1] That we may not

[1] GEN. STAT. FLORIDA 1906

SEC. 2677. (2152.) MAY ISSUE AGAINST STOCKHOLDERS.—If any execution shall issue against the property or effects of any corporation,

misapprehend the construction placed upon them by the state court of last resort, or the ground of its opinion that they afforded due process of law to plaintiff in error,

---

and there cannot be found whereon to levy, then such execution may be issued against any of the stockholders to an extent equal in amount for so much as may remain unpaid upon the subscription and no further; and all property whether real or personal of any stockholder in any corporation aforesaid shall be exempt from the debts and liabilities of such corporation contracted in its corporate capacity, except the stock of said stockholder of or in said corporation to the extent mentioned aforesaid.

[Amended by Florida Laws 1909, Ch. 5892, to read as follows:

2677. (2152.) MAY ISSUE AGAINST STOCKHOLDERS.—If any execution shall issue against the property or effects of any corporation, and there cannot be found whereon to levy, then such execution may be issued against any of the stockholders to an extent equal in amount for so much as may remain unpaid upon their subscription to capital stock and no further.]

2678. (2153.) CUSTODIAN OF RECORDS TO GIVE SHERIFF NECESSARY INFORMATION.—The clerk or other officer having charge of the books, records and papers of any corporation, on demand of any officer holding execution against the same, shall furnish such officer with the name, places of residence and the amount of liability of every person liable as aforesaid, and if such officer refuses so to do he shall, upon complaint thereof, be liable to a fine not exceeding five hundred dollars.

1624. (1195.) UPON AFFIDAVIT OF ILLEGALITY AND BOND.—If any execution shall issue illegally, the defendant in execution, his agent or attorney, may procure a stay of the same by making and delivering to the officer having the execution an affidavit stating the illegality and whether any part of the execution be due, and a bond payable to the plaintiff with two good and sufficient sureties in double the amount of the execution or the part of which a stay is sought. Upon receipt of such affidavit and bond the officer shall stay any proceeding on the execution and return the bond and affidavit to the court from which the execution issued, and such court shall pass upon the question of illegality as soon as possible. If the execution be adjudged illegal in any part the court shall make an order staying it as to such part, but if it be adjudged legal in whole or in part, the court shall (or if it has a clerk, shall direct such clerk to) enter up judgment against the principal and sureties on such bond for the amount of so much

it will be well to briefly review their history. Sections 2677 and 2678 trace their origin to §§ 22 and 23 of an act of 1868 (Laws, p. 123, ch. 1639), which followed the model of § 36 of the Companies Clauses Consolidation Act 1845 (8 & 9 Vict. Cap. 16), except that they permitted execution against the stockholder to an extent "equal in amount to the amount of stock by him owned, together with any amount unpaid thereon." There was a proviso, as in the English act, that no such execution should issue except upon an order of the court, "made upon motion in open court after good and sufficient notice in writing to the person upon whom execution is desired." These sections were repealed in 1874 (Laws, p. 95, ch. 2016), and reënacted in 1879, with insignificant verbal modifications (Laws, p. 118, ch. 3165, §§ 9 and 10). By an act of 1887 (Laws, p. 96, ch. 3729), the liability of stockholders to the creditors of the corporation was limited to "so much as may remain unpaid upon his or her subscription." In the Revision of 1892 this limitation of the liability was engrafted upon the act of 1868 as reënacted in 1879, and at the same time the provision for notice to the stockholder prior to the issuing of the execution was omitted. The result appeared as §§ 2152 and 2153 of that Revision, found as §§ 2677 and 2678 in the General Statutes of 1906. The amendment of 1909 was apparently passed for the purpose of bringing the phraseology of the section into conformity with the judicial construction, as declared in *Knight & Wall Co.* v. *Tampa S. L. B. Co.*, 55 Florida, 728, 743, 744.

Meanwhile, and from an early period, the laws of Florida

---

of the execution as shall be adjudged to be legal, and execution shall forthwith issue thereon.

1625. (1196.) UPON MOTION.—The court before which an execution is returnable may, on a motion and notice to the adverse party, for good cause, upon such terms as the court may impose, direct a stay of the same, and the suspension of proceedings thereon.

have contained provisions for testing the legality of any writ of execution upon application of the defendant made after its issue. Sections 1624 and 1625, Florida Gen. Stats. 1906, referred to in the opinion of the Supreme Court above quoted, originated in acts of 1834 (Laws, p. 13, ch. 742), and of 1844 (Laws, p. 54, § 6), concerning which the court has repeatedly held that they provide separate, consistent, and independent remedies; the one by proceeding before the sheriff, the other before the court or a judge in vacation; and that the courts of law have full power to revoke, correct, restrain, or quash their own process in the course of their ordinary jurisdiction, so that no recourse to a court of equity is necessary. *Mitchell* v. *Duncan*, 7 Florida, 13, 19; *Robinson* v. *Yon*, 8 Florida, 350, 354; *Mathews* v. *Hillyer*, 17 Florida, 498, 500; *Barnett* v. *Hickson*, 52 Florida, 457, 460.

We understand, therefore, that in the present case the court held that under § 2677, as amended in 1909, on a return of "no property" upon an execution against a corporation, an execution may be issued against any stockholder without notice to him or other preliminary step; that the writ is to be enforced against his property to the extent of his unpaid subscription to the stock that he holds in the company, and this amount the officer ascertains from the custodian of the records of the corporation, in accordance with § 2678; that if the person against whom the execution is issued is not in fact a holder of stock upon which there is an unpaid subscription, or if the amount of the execution exceeds the unpaid subscription, he may have relief under §§ 1624 or 1625; and that, in the absence of such objection on his part, the execution is enforced, although there may have been only a formal levy, without even such notice to the owner of the property as might be implied from a forcible seizure or an interference with his possession.

Thus construed, and as applied in this case, we think

§ 2677 is repugnant to the "due process of law" provision of the Fourteenth Amendment, which requires at least a hearing, or an opportunity to be heard, in order to warrant the taking of one's property to satisfy his alleged debt or obligation; and in our opinion the other sections do not adequately supply the defect.

It may be conceded that a judgment recovered against a corporation, without fraud or collusion, in a court having jurisdiction over the subject-matter and the party, may consistently with the Fourteenth Amendment be treated as concluding the stockholder respecting the existence and amount of the indebtedness so adjudged. *Sanger* v. *Upton, Assignee,* 91 U. S. 56, 59; *Hawkins* v. *Glenn,* 131 U. S. 319, 329; *Glenn* v. *Liggett,* 135 U. S. 533, 544; *Great Western Telegraph Co.* v. *Purdy,* 162 U. S. 329, 337. But before a third party's property may be taken to pay that indebtedness upon the ground that he is a stockholder and indebted to the corporation for an unpaid subscription, he is entitled, upon the most fundamental principles, to a day in court and a hearing upon such questions as whether the judgment is void or voidable for want of jurisdiction or fraud, whether he is a stockholder and indebted, and other defenses personal to himself. See *Great Western Telegraph Co.* v. *Purdy, ubi supra; Bernheimer* v. *Converse,* 206 U. S. 516, 528, 532; *Converse* v. *Hamilton,* 224 U. S. 243, 256; *Selig* v. *Hamilton,* 234 U. S. 652, 660.

The suggestion that because, under §§ 1624 and 1625, a hearing upon pertinent questions of fact may be had at the instance of the alleged stockholder after the execution issues and before interference with his possession or his property right, therefore plaintiff in error, having been at liberty in this proceeding to raise meritorious questions, is not "within the class who may justly complain," will not withstand critical analysis.

The statute mentions no classes, and the state court

merely distinguished between those who complain and those who do not. Against one and all, execution may be issued without notice or hearing; the judgment against the corporation, and the record of stockholdings and stock subscriptions found upon the books of the corporation, being treated as conclusive against those named as stockholders. If a person against whom execution is thus issued as for an unpaid stock subscription does not happen to receive notice, extra-officially, or receiving it makes no objection, his property is taken in satisfaction of the corporation's debt—manifestly without due process of law. But, it is said, plaintiff in error is not within that class; he in fact learned of the execution before his property was sold or even his possession was disturbed, and he had an opportunity for a hearing in the present proceeding as to all questions upon which his liability depended. The fallacy of this is that it ignores the issue of law raised by the petition of plaintiff in error, and substitutes an issue of fact for which he was not summoned and which he has not consented to litigate. To one who protests against the taking of his property without due process of law, it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits. *Rees* v. *Watertown*, 19 Wall. 107, 123.

Nor can extra-official or casual notice, or a hearing granted as a matter of favor or discretion, be deemed a substantial substitute for the due process of law that the Constitution requires. In *Stuart* v. *Palmer*, 74 N. Y. 183, 188, which involved the validity of a statute providing for assessing the expense of a local improvement upon the lands benefited, but without notice to the owner, the court said: "It is not enough that the owners may by chance have notice, or that they may as a matter of favor have a hearing. The law must require notice to them, and give them the right to a hearing and an op-

portunity to be heard." The soundness of this doctrine has repeatedly been recognized by this court. Thus, in *Security Trust Co.* v. *Lexington*, 203 U. S. 323, 333, the court, by Mr. Justice Peckham, said, with respect to an assessment for back taxes: "If the statute did not provide for a notice in any form, it is not material that as a matter of grace or favor notice may have been given of the proposed assessment. It is not what notice, uncalled for by the statute, the taxpayer may have received in a particular case that is material, but the question is, whether any notice is provided for by the statute" (citing the New York case). So, in *Central of Georgia Ry.* v. *Wright*, 207 U. S. 127, 138, the court said: "This notice must be provided as an essential part of the statutory provision and not awarded as a mere matter of favor or grace." In *Roller* v. *Holly*, 176 U. S. 398, 409, the court declared: "The right of a citizen to due process of law must rest upon a basis more substantial than favor or discretion." And in *Louis. & Nash. R. R.* v. *Stock Yards Co.*, 212 U. S. 132, 144, it was said: "The law itself must save the parties' rights, and not leave them to the discretion of the courts as such."

The writ of execution cannot of itself be treated as equivalent to a writ of attachment, establishing a lien upon the stockholder's property, but going no further until he has had an opportunity to show cause why that property should not be applied to the payment of the corporation's debt. Not only is such a purpose wholly unexpressed in the writ, but such is not its normal function or effect, no "day in court" is named, and there is no provision for notice or monition by service, publication, mailing, or otherwise. *Windsor* v. *McVeigh*, 93 U. S. 274, 279, *et seq.*; *Grannis* v. *Ordean*, 234 U. S. 385, 393.

This case bears no proper analogy to *York* v. *Texas*, 137 U. S. 15, 21; *Kauffman* v. *Wootters*, 138 U. S. 285; and *Western Indemnity Co.* v. *Rupp*, 235 U. S. 261, 272;

where it was held that a State, without violence to the due process clause of the Fourteenth Amendment, may so regulate its practice that a person who voluntarily enters one of its courts to contest any question in a pending action—even a person appearing specially to object that the court has not acquired jurisdiction over him—may be deemed to have submitted himself to the jurisdiction of the court for all purposes of the action, and hence be bound by its determination of the merits if his objection to the jurisdiction be overruled. For in this case there was no pending action or issue; plaintiff in error came into court to object, on jurisdictional grounds, to the execution of final process upon his property. And the effect of the decision under review was to convert his petition, which simply raised an issue of law under the state constitution and the Fourteenth Amendment into a tender of an issue of fact respecting his status as a stockholder and the amount of his unpaid subscription, if any, and then to hold him concluded upon the latter issue for failure to introduce evidence bearing upon it. In doing this, the court in effect rendered judgment against him upon a matter that was not within the pleadings and was not in fact litigated. To do this, without his consent—and the record shows no consent—is contrary to fundamental principles of justice. *Reynolds* v. *Stockton*, 140 U. S. 254, 268, 269.

Judgment reversed, and the cause remanded for further proceedings not inconsistent with this opinion.